

CALIFORNIA COASTAL COMMISSION

SOUTH COAST AREA OFFICE
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W.7a

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Staff: John T. Auyong

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Hearing Date: September 9, 1998

Commission Action:

STAFF REPORT: REGULAR CALENDAR

APPLICATION NO.: **5-97-367**

APPLICANT: Hellman Properties (LLC) AGENT: Dave Bartlett

PROJECT LOCATION: Northeast of Pacific Coast Highway (State Route 1), Southeast of the San Gabriel River, South of Adolfo Lopez Drive, West of Seal Beach Boulevard, and North of Marina Hill; City of Seal Beach; County of Orange

PROJECT DESCRIPTION: Subdivision of 196 acre site into 9 parcels, including further subdivision of one of the parcels into 70 single-family residential lots in a private community; fill of 27 acres of degraded and severely degraded wetlands to construct 28.1 acres for a salt marsh restoration project and an 18 hole public golf course including 6.8 acres of freshwater marsh integrated into the golf course and reservation of 16.2 acres of existing oil production areas for future wetland restoration; dedication of Gum Grove Park to the City of Seal Beach; construction of interpretive areas, visitor-serving recreation facilities, and a golf clubhouse; dedication of public access trails; extension of Adolfo Lopez Drive; excavation of test pits for an archaeological testing program; and 1,600,000 cubic yards of grading.

LOCAL APPROVALS RECEIVED and SUBSTANTIVE FILE DOCUMENTS: See Appendices

STAFF NOTE: Since the June 1998 hearing on the permit application, the Port of Long Beach ("Port") has undertaken preliminary studies to determine the feasibility of undertaking a large scale wetland restoration project on the subject site as mitigation for fill of coastal waters due to Port expansion. (see Exhibit 3) The Port looked at the possibility of restoring approximately 106 acres of the subject site, which is essentially the entire lowlands except for the State Lands Parcel and Gum Grove Park. The Port determined that a large scale restoration effort is technically feasible. However, at this point, the Port has concluded that the cost of a technically feasible, large scale restoration effort is prohibitive. The Port did nevertheless determine that there were four possible ways to modify their restoration project that would make it more palatable from a cost-perspective. The necessary modifications include: 1) on-site disposal, 2) land dedication, 3) cost-effective long-term maintenance funding, and 4) a raising of the mitigation ratio to at least 1.0 to 1 (instead of 0.9 to 1),

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pending the outcome of a 6 week field study of the San Gabriel River. The first two modifications would require the cooperation of the applicant. Thus far, the applicant has declined to do so. Staff notes that the Port of Long Beach study and potential wetland restoration is but one possible wetlands mitigation proposal. Other entities willing to restore the wetlands besides either the Port or applicant, and other restoration alternatives, could also be found viable.

The staff and the applicant and applicant's representatives have also met twice since the June 1998 hearing to discuss the proposed project and staff recommendation. Although the applicant has chosen not to revise their project description at this time, the applicant has informally discussed with staff potential modifications to the project that would result in a small increase in the wetland acreage. These changes involve relocating a mineral production tank farm to add another 3-4 acres to the proposed upfront salt marsh, resulting in a 31-32 acre wetland. This additional acreage would not meet the minimum 36 acre (excluding buffers) requirement first recommended by staff at the April 1998 hearing. The applicant has also suggested that it would be possible to convert the proposed 6.8 acres of freshwater marsh to saltwater marsh, bringing the upfront salt marsh total to about 38-39 acres. However, the proposed freshwater marshes are comprised of about 6 small ponds completely surrounded by the golf course. Staff previously determined that the freshwater marshes would not provide quality habitat because they would have no buffers and would be subject to significant adverse impacts resulting from immediate proximity to golfers and thus cannot be counted as high quality habitat. If they were converted to saltwater marshes, the saltwater marshes would be subject to the same adverse impacts and also cannot be counted as valuable habitat. Staff acknowledges the effort that the applicant has undertaken to develop these possible changes. However, these potential changes have been determined by staff not to be significant enough to change the June 1998 staff recommendation of denial of the golf course. Therefore, the applicant has declined to make the potential changes part of the project proposal. (see Exhibit 1, pages 11-12)

EXECUTIVE DIRECTOR'S STAFF NOTE (from the June 1998 staff report)
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Staff is modifying its March 19, 1998, report and now recommends approval of the residential housing component of the project, approval of land divisions as modified by conditions, and deletion of the proposed golf course. Staff no longer recommends approval of the proposed golf course because filling wetlands to build a golf course is not consistent with Coastal Act wetlands protection policies. It is not often that staff reverses a previous recommendation (i.e., in this case, relative to the golf course). While staff takes great pride in its professionalism and high quality work, staff also takes responsibility and is accountable for its action and when in error will not hesitate to say so.

During the presentation of the March 19 report at the April Commission meeting, staff attempted to make clear that in arriving at the recommendation of approval with conditions, judgments were made relative to potential consistency with Coastal Act wetlands policies that involved interpretations and matters of opinion. The public hearing on this matter in April was illuminating and instructive. The Chief Counsel's very thorough review of the legal theories that must be applied to ensure a firm legal basis for approval of wetland fill for a golf course contributed to staff's reevaluation of its recommendation. Additionally, public testimony (i.e., both urging that the golf course not be reduced to accommodate wetland restoration and opposition to staff characterizing the project as being for "restoration purposes" within the meaning of Coastal Act section 30233(a)(7)), discussion and expressions of concern by commissioners, and further internal discussion among staff, resulted in staff concluding that the March 19 recommendation should be changed.

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Of the three possible legal theories on which a finding to support approval of wetland fill for a golf course could be based, staff now is of the opinion none is applicable here.

The applicant urges the Commission to rely on section 30007.5 which directs the Commission to resolve conflicts between Coastal Act policies "...in a manner which on balance is the most protective of significant coastal resources." However, in staff's opinion there is no direct conflict here between two or more specific chapter three Coastal Act policies; instead, section 30233 expressly limits the filling of wetlands to eight enumerated uses and development of a golf course is not one of them. The staff strongly urges the Commission to reject the applicant's proposed theory to rely on section 30007.5 because the Commission has consistently rejected an expansive interpretation of section 30007.5 that would balance general goals against specific wetlands policies. Were the Commission to begin using the section contrary to its long-standing position on this issue (i.e., to only use the section when two or more specific chapter three policies are in direct conflict), the result would be to render meaningless specific chapter three Coastal Act policies since any project can be said to raise conflicts between general goals and specific policies. It would be up to any then-sitting Commission to decide what "on balance is the most protective of significant coastal resources" in any matter to come before it. The result would be confusion and inconsistent, haphazard application of Coastal Act policies.

The second theory was presented by staff in the March 19 report and attempted to fit the proposed project into section 30233 (a)(7) by characterizing it as being a development for "restoration purposes." Recall, however, that this approach could, in staff's view, only have worked if the golf course were made smaller and the wetland acreage for restoration were increased. The applicant, the City of Seal Beach and many local residents who testified at the hearing objected to these proposed staff modifications because they felt it would compromise the viability of the golf course as an eighteen-hole regulation-size course. Information was also presented to staff that the City looks to the golf course as being the source of new funds to defray costs of providing public services (i.e., police and fire protection) to the new residential community proposed as part of this overall project. Irrespective of how the Commission may have acted on staff's recommendation relative to increasing the wetland acreage for restoration, it became abundantly clear during the hearing that the relevant part of the project is a golf course accompanied by wetland restoration as mitigation and not a restoration project first with a golf course then added into the equation to enhance overall project feasibility. Staff now is of the opinion that in light of applicable facts and circumstances, the golf course should not and ought not be characterized as a development intended for "restoration purposes" pursuant to section 30233(a)(7). The lowlands portion of the project is clearly a golf course first and a restoration project second and not the other way around. Accordingly, staff recommends that the Commission not step onto the precedential slippery slope it would have been on had it followed the staff's prior recommendation.

The third theory explained by Mr. Faust at the April hearing, would apply sections 30233(a) and 30411(b) in combination to justify wetland fill because the Department of Fish and Game had previously concluded that the subject wetlands are severely degraded and cannot feasibly be restored in conjunction with a boating facility. This theory relies on non-binding Commission "guidelines" to suggest that if there are other feasible ways to accomplish restoration of the severely degraded wetlands (i.e., a golf course, residential development) those other uses are permissible in such a wetland. The rub here is that this theory has been specifically rejected by a Superior court. In *Bolsa Chica Land Trust v. CCC*, the court addressed this theory and said: "...the Commission's conclusion is simply inconsistent with the clear language of section 30233 which expressly limits the filling of wetlands to

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eight enumerated uses, of which residential development [read, golf course] is not one.” The court then went on to say: “The Commission’s interpretation would open the door to any type of development in a wetland whenever a finding could be made that funds were otherwise unavailable to restore degraded wetlands. It is for the Legislature to establish such a policy, not the Commission.” The court also held that other feasible ways to achieve restoration must be less intrusive than a boating facility. Section 30233 requires that a boating facility not exceed 25% of the degraded wetlands and section 30411 requires that not less than 75% of the degraded wetlands be restored. An “other feasible way” of restoring wetlands should occupy less than 25% of the wetlands and should restore more than 75% of the wetlands in order to be less intrusive than a boating facility. An “other feasible way” should also be the least environmentally damaging alternative. The proposed golf course is not less intrusive than a boating facility nor is it the least environmentally damaging alternative to achieve restoration.

Accordingly, staff sees no legal basis under the Coastal Act for approval of a project that allows the fill of 17.9 acres of wetlands for development of a golf course.

There are several additional reasons that explain staff’s change in recommendation. At the time this project was reviewed with the Executive Director, it was not entirely clear to the Executive Director how many legal parcels exist within the 196.6 acre project site and whether the portion of the overall site on which the public golf course, mineral production and wetland restoration would occur (much of the lowlands) constituted separate legal parcels. The concern was that if each area constituted a separate legal parcel, pursuant to regulatory takings rulings of the courts, the owner of each legal parcel would be entitled to approval of an economically viable use.

Since that time, the applicant has confirmed that there is no existing subdivision of the Hellman Ranch property. Although the project site may be composed of several parcels for tax assessment purposes, it constitutes only one single legal lot for purposes of alienation and development. This parcel is currently utilized for mineral production, of which Hellman owns the entire operating interest. The applicant is thus requesting Commission approval of a subdivision of this one legal parcel in a configuration the Commission has no legal obligation to approve.

Accordingly, staff recommends that the Commission approve a revised land division configuration that maintains in single parcel ownership and usage the land areas proposed for the golf course and wetland restoration as well as the area currently used for oil production which provides an economically viable use of the property. This means that should the owner of the separate lowlands parcel the Commission would be approving (assuming the permit is accepted and all other steps necessary to create the new subdivision and parcel are taken) at some time in the future come forward with a new development proposal in the lowlands portion of the project site now before the Commission, that owner would already have an economically viable use of the property (assuming mineral production is ongoing). Alternative uses consistent with Coastal Act policies could be considered on the mineral production parcel which might augment its economic use. Only by keeping the mineral production sites combined with the remainder of the lowlands area as one parcel can the Commission allow the subdivision of the remainder of the project site and ensure that future development proposals will not compel the Commission to allow uses in the lowlands solely to avoid a takings claim.

Another reason staff is changing its recommendation is based on the long view of the environmental future of Southern California’s human and natural communities. California has lost the vast majority of its coastal wetlands, especially in the southern portion of the state. What few historic coastal

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wetlands remain are generally in a fairly degraded condition -- a condition of reduced habitat vitality and species diversity resulting from past human activity. As a matter of general environmental direction it is state and federal policy to promote habitat, and especially wetland restoration wherever possible. As the staff report points out, this project site is a part of an historic wetlands complex in excess of 2,400 acres. Development has reduced this wetlands complex to a fraction of its historic size. Staff is aware of the long, and often tortured history associated with the project site. In fact, staff was deliberate about and tried to be creative in crafting a resolution to the long-standing controversy over what should be done on this land. On reflection and reconsideration, it is not unreasonable to anticipate future restoration of much if not most of the project site for viable wetland habitat purposes. The industrial ports of Los Angeles and Long Beach will most likely expand in the future and will need additional mitigation credits -- credits that can be earned through wetland restoration projects. The opportunities for mitigation restoration projects in proximity to the two ports are extremely constrained. The lowlands of this project site are former wetlands and clearly offer a viable venue for such restoration in the future. A major function and purpose of the Coastal Commission is to manage and plan coastal land uses, in partnership with local government, in a manner that preserves future options for improvement of environmental resources and conditions in the coastal zone. Staff believes the Commission has the opportunity to do exactly that in this case and in this area of southern California and it can do so while at the same time protecting the private property owner's right to economic use of the property. It should be noted that an existing and continuing potential use of the lowlands area is for mitigation restoration credits. Keeping the lowlands and the mineral production sites combined does not lessen the potential use of the area for mitigation credit. Indeed, the proposal is to ultimately use production site lands for restoration purposes. Staff concludes that this lowland area is the type of land area the ports, or another entity in need of mitigation credits, could feasibly restore.

A final note is in order relative to representations made to the applicant and city representatives prior to formal submittal of this application. The applicant's representatives believe they were encouraged to proceed with their project as a result of a preliminary meeting with the Executive Director. When the Executive Director met with the project proponents, at their request, before formal submittal of the application, he expressed the affirmative opinion the project appeared to be a vast improvement over past development proposals for the site. That is still the staff's opinion. However, at the time of the meeting no specific analysis evaluating the proposed development project's impacts and application of Coastal Act policies had been conducted by Commission staff. Everyone present at that meeting knew this. While an overall impression and a preliminary reaction was provided, it was not intended to be nor could such a superficial evaluation be considered legally adequate and conclusive.

The Executive Director regrets any misimpressions that may have resulted from the preliminary meeting on this matter. Indeed, the Executive Director acknowledged to other staff and the public his commitment to make extra efforts to attempt to arrive at a workable and acceptable resolution as a result of early communications with representatives of the city and the applicant. Notwithstanding staff's efforts to find a resolution in this matter, in the end, Coastal Act policies are the governing standards of law that must prevail.

SUMMARY OF STAFF RECOMMENDATION:

Staff is recommending approval of the project with special conditions requiring: 1) elimination of the golf course proposed within existing wetlands; 2) a revised land division configuration that maintains in single parcel

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ownership and usage the land areas proposed for the golf course and restoration as well as the area currently used for mineral production; 3) confirmation that the proposed dedication of Gum Grove Park has occurred prior to permit issuance; 4) final plans for the structural designs of the proposed visitor-serving uses; 5) reasonable mitigation measures for impacts to archaeological resources; and 6) incorporation of City water quality and hazards mitigation measures.

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STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution:

I. APPROVAL WITH CONDITIONS.

The Commission hereby grants a permit, subject to the conditions below, for the proposed development on the grounds that the development will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

II. STANDARD CONDITIONS.

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date this permit is reported to the Commission. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Compliance.** All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. **Inspections.** The Commission staff shall be allowed to inspect the site and the project during its development, subject to 24-hour advance notice.
6. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
7. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS.**1. *Elimination of Golf Course/Lowland Development.***

This coastal development permit 5-97-367 does not approve the proposed golf course, nor does it approve any of the proposed development in the areas covered by proposed Lots 4, 6, 7 and 8 of proposed Tentative Tract Map 15381 except for the proposed archaeological investigation.

2. Revised Vesting Tentative Tract Map No. 15381.

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and approval of the Executive Director, two copies of a revised vesting tentative map for Tract No. 15381. The revised map shall show only five legal lots as generally depicted in Exhibit B; namely, 1) the lot currently owned by the California State Lands Commission, 2) the lot currently owned by the City of Seal Beach Redevelopment Agency, 3) proposed Lot 2 which is proposed to be further subdivided into seventy residential lots pursuant to proposed Tentative Tract Map 15402, 4) proposed Lot 3 for the proposed dedication of Gum Grove Park, which shall be in substantial conformance with the configuration shown on the map submitted with the permit application and maintain the proposed minimum 25 wide frontage along Seal Beach Boulevard, and 5) a lot consisting of the remainder of the subject site owned by the applicant. The applicant shall record the revised map approved by the Executive Director.

3. State Lands Parcel.

A. Lease Restriction. Prior to the issuance of the coastal development permit, the applicant shall execute and record a lease restriction, subject to the review and approval of the Executive Director, over the property commonly known as the California State Lands Commission parcel, situated northeasterly of Pacific Coast Highway at its intersection with First Street in the City of Seal Beach, which provides that:

(1) This coastal development permit approves only the construction of: a) an interpretive center consisting of a raised, handicap-accessible platform with information panels containing photographs, maps, exhibits, etc., overlooking the proposed salt marsh, b) the placement only of the Krenwinkle House on the site (no uses are established), c) the construction of public parking spaces, and d) construction of a structure or structures containing a maximum of 10,000 square feet of visitor-serving uses on the State Lands parcel; provided that adequate parking is supplied.

(2) Any modifications to the development described in this condition shall require an amendment to the permit from the Coastal Commission.

(3) An approved coastal development permit from the Coastal Commission shall be obtained prior to the establishment of uses to be contained in the Krenwinkle House after it is located on the State Lands parcel.

(4) Only public access, public recreation, public education, and lower-cost visitor-serving commercial facilities, which are consistent with the Chapter 3 policies of the Coastal Act and with the requirements established by the California State Lands Commission for use of public lands, shall be permitted on the State Lands parcel.

(5) All office uses are prohibited on the State Lands parcel (excepting offices which are necessary for the administration of, and are adjunct to, the public access and approved visitor-serving uses).

(6) Parking for the visitor-serving uses on the State Lands parcel shall be provided based on the standards contained in the Hellman Ranch Specific Plan, as adopted by City of Seal Ordinance 97-2 on September 27, 1997. A minimum of sixty-two (62) public parking spaces, as depicted on Figure 5-4, Page 5-21 of the coastal development permit application, shall be provided and maintained on-site. Of these 62 public

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parking spaces, ten (10) shall be reserved for visitors who are not patronizing any of the commercial visitor-serving uses.

(7) Consistent with Mitigation Measure R-5 of Seal Beach City Council Resolution No. 4562, the permittee or lessee shall install a bicycle rack near the entrance to the proposed pedestrian trail for the saltwater wetland. The bicycle rack shall; 1) be public, 2) be maintained by the permittee, and 3) accommodate a minimum of twenty (20) bicycles.

The document shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This lease restriction shall not be removed or changed without a Coastal Commission-approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

B. Agreement to be bound. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall obtain a written agreement from the owner of the State Lands parcel, subject to the review and approval of the executive director, stating that in the event of termination of the lease, and for so long as the building and facilities constructed pursuant to permit 5-97-367, the owner of the state lands parcel will agree to require each new or different tenant, occupant or operator, including itself, to sign a lease restriction or other appropriate instrument agreeing to comply with the conditions set forth in Special Condition 6.a. Above.

C. Final Plans. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and approval of the Executive Director, plans for the proposed interpretive center and visitor-serving commercial building which are consistent with the requirements of this permit. The applicant shall comply with the plans approved by the Executive Director.

4. *Gum Grove Park*

PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and approval of the Executive Director, written evidence demonstrating that the area known as Gum Grove Nature Park and as delineated as Lot 3 of proposed Vesting Tentative Tract Map 15381 has been dedicated in fee to the City of Seal Beach, as proposed by the applicant. The dedication documents shall provide that:

(A) The park shall be preserved in perpetuity as a passive recreational nature park open to the public. Active recreational activities or commercial facilities shall be prohibited.

(B) Necessary parking facilities which are the minimum required to serve the park and which meets Americans with Disabilities Act requirements shall be provided. The existing twenty (20) striped parking spaces for Gum Grove Park shall be maintained.

(C) All new or upgraded trails within the dedicated park area shall be constructed to be accessible to persons with disabilities consistent with Americans with Disabilities Act requirements. New or upgraded trails shall not be lighted in order to minimize impacts on wetlands.

(D) Small scale interpretive signage which describes the Monarch Butterfly may be permitted if approved by an amendment to this permit.

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(E) Gum Grove Park shall be open from dawn to dusk on a daily basis. Changes in hours of operation of Gum Grove Park shall require an amendment to this permit unless the Executive Director determines that an amendment is not required.

(F) Signage shall be conspicuously posted which states that the park is open to the general public.

(G) That portion of proposed Lot 3 of Tentative Tract Map No. 15381, comprised of an approximately 25 foot wide strip of land which borders Seal Beach Boulevard and extends west from Seal Beach Boulevard to connect with the primarily used part of Gum Grove Park, shall be subject to the following requirements:

(1) The frontage along Seal Beach Boulevard shall not be gated, fenced, or obstructed in any manner which prevents public access from Seal Beach Boulevard.

(2) The area shall be reserved for a public a trail and parking lot, which are visible, and directly accessible to the public from Seal Beach Boulevard, and which lead from Seal Beach Boulevard to the primary part of Gum Grove Park to the west. The public parking lot area shall be large enough for a minimum of ten (10) parking spaces. Where it is not feasible to reserve enough public parking area on this portion of proposed Lot 3, public parking directly accessible from Seal Beach Boulevard shall be provided for on proposed Lot 2 of Tentative Tract Map No. 15381 adjacent to proposed Lot 3, in accordance with the provisions of Special Condition 5.B. of this permit.

5. *Public Access Program.*

A. Public Access Signage. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit, for the review and approval of the Executive Director, a detailed signage plan which provides for the installation of signs clearly visible from Pacific Coast Highway and Seal Beach Boulevard which invite and encourage the public to use the public access, parking, and recreation opportunities proposed at Gum Grove Park, the State Lands parcel, and the public access trail and public parking linking Gum Grove Park to Seal Beach Boulevard. Key locations include but are not limited to; 1) the entrance to the State Lands parcel (intersection of First Street and Pacific Coast Highway, and 2) Gum Grove Park, both at its western entrance and at the proposed Seal Beach Boulevard entrance. The plans shall also provide for signage which designates ten (10) of the parking spaces at the State Lands parcel for the exclusive use of trail users and which clearly indicates that the bike racks on the State Lands parcel are for the general public. The plans shall indicate the location, materials, dimensions, colors, and text of the signs. The permittee shall install the signs in accordance with the signage plans approved by the Executive Director.

B. Residential Community Streets (Vesting Tentative Tract Map No. 15402). PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which shall provide that: 1) public pedestrian and bicycle access to the streets and sidewalks constructed within the area subject to Vesting Tentative Tract Map No. 15402 shall not be precluded, 2) no locked gates, walls, fences, or other obstructions prohibiting public pedestrian or bicycle access to the streets and sidewalks constructed within the area subject to Vesting Tentative Tract Map No. 15402 shall be permitted, 3) no requirement to allow public vehicular access over the private streets is necessary if the applicant is willing to provide public parking within Gum Grove and a

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separate vehicular entrance to from Seal Beach Boulevard to said public parking, 4) if fewer than the ten (10) public parking spaces required by Special Condition 4.(G)(2) of this permit can be constructed on proposed Lot 3 of Vesting Tentative Tract Map No. 15381, the portion of the area subject to Vesting Tentative Tract Map No. 15402 closest to Lot 3 shall be reserved for the balance of the public parking spaces so that the parking spaces are directly accessible from Seal Beach Boulevard. The deed restriction shall be recorded over the entire area subject to Vesting Tentative Tract Map No. 15402 and shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Coastal Commission-approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

C. Revised Vesting Tentative Tract Map No. 15402. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and approval of the Executive Director, two copies of a revised vesting tentative map for Tract No. 15402 if: (1) all of the ten public parking spaces required under Special Condition 4.(G)(2) cannot be built on proposed Lot 3 of Vesting Tentative Tract Map 15381, and/or (2) the entities with jurisdiction over Seal Beach Boulevard do not approve a separate vehicular entrance off of Seal Beach Boulevard to said public parking spaces. The revised map shall show: (1) the locations and design of said public parking spaces which cannot be built on Lot 3 and instead shall be built on the portion of the area subject to Vesting Tentative Tract Map No. 15402 closest to Lot 3, and 2) the location of the public street which connects the public parking required under Special Condition 4.(G)(2) of this permit with the entrance to the subdivision proposed by Vesting Tentative Tract Map No. 15402. The revised map shall be accompanied by written documentation demonstrating that the governmental agencies which have jurisdiction over Seal Beach Boulevard and parking space standards have approved the revised map. The applicant shall record the revised map approved by the Executive Director.

D. Construction of Trail and Parking Lot. PRIOR TO COMMENCEMENT OF CONSTRUCTION OF THE HOUSES WITHIN THE AREA SUBJECT TO VESTING TENTATIVE TRACT MAP NO. 15402, the applicant shall construct a public access trail and parking lot, which are visible and directly accessible to the public from Seal Beach Boulevard, which lead from Seal Beach Boulevard to the primary part of Gum Grove Park to the west. The public parking lot shall contain a minimum of ten (10) parking spaces and shall be directly accessible from Seal Beach Boulevard. Where it is not feasible to construct the public parking and vehicular entrance on this portion of proposed Lot 3 of Vesting Tentative Tract Map No. 15381, public parking directly accessible from Seal Beach Boulevard shall be constructed on proposed Lot 2 of Tentative Tract Map No. 15381 (i.e., the area subject to Vesting Tentative Tract Map No. 15402) immediately adjacent to proposed Lot 3, in accordance with the provisions of Special Condition 5.B of this permit.

6. *Archaeology*

For purposes of this condition, "OHP" shall mean the State Office of Historic Preservation, and "NAHC" shall mean the state Native American Heritage Commission.

A. Research Design. The permittee shall undertake the proposed archaeological investigation in conformance with the proposed archaeological research design entitled A Research Design for the Evaluation of Archaeological Sites within the Hellman Ranch Specific Plan Area dated November 1997 prepared by KEA Environmental, Inc. for the City of Seal Beach. Prior to issuance of the coastal development permit, the applicant shall submit written evidence, subject to the review and approval of the Executive Director, that a copy of the archaeological research design has been submitted to the OHP, the NAHC, and the Native American

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group/person deemed appropriate deemed acceptable by the NAHC, for their review and comment. An amendment to this permit shall be required for any changes to the research design suggested by OHP, NAHC, or the Native American group/person unless the Executive Director determines that an amendment is not required.

B. Selection of Archaeologist(s) and Native American Monitor(s). The archaeologist(s) selected by the City shall meet the United States Department of Interior minimum standards for archaeological consultants, as also endorsed by the OHP. The City shall select the Native American monitor(s) in compliance with the "Guidelines for monitors/consultants of Native American cultural, religious and burial sites" issued by the NAHC, and in consultation with the appropriate Native American person/group deemed acceptable by the NAHC.

C. Post-Investigation Mitigation Measures. Upon completion of the archaeological investigation, and prior to the commencement of construction of any development (other than archaeological investigation activities or subdivision) located within proposed Lot 2 of proposed Vesting Tentative Tract Map 15381, the applicant shall submit, for the review and approval of the Executive Director, a written report regarding the following: 1) a summary of the findings of the archaeological investigation, and 2) a final written mitigation plan which shall identify recommended mitigation measures, including capping of archaeological sites, data recovery and curation of important archaeological resources as defined by the California Environmental Quality Act, and detailed additional mitigation measures which need to be implemented. The applicant shall also submit for review and approval of the executive director, a signed contract with a City-selected archaeological consultant that provides for archaeological salvage that follows current accepted professional practice, if additional archaeological data recovery measures are determined appropriate. The written report and additional mitigation measures shall also be submitted to the OHP and the appropriate Native American person/group designated or deemed acceptable by the NAHC. An amendment to this permit shall be required to implement any additional mitigation measures unless the executive director determines a permit amendment is not required.

D. Implementation of Mitigation Measures and Summary of Fieldwork. Prior to commencement of site preparation, grading, and construction activities for any development (other than archaeological investigation activities) located within a fifty foot (50") radius of the furthest boundary of each state-identified archaeological site as delineated in the archaeological research design, all of the requirements of special conditions 5.A., 5.B., and 5.C. shall have been met. All development shall occur consistent with the final plan required by special condition 5.C. A written synopsis report summarizing all work performed in compliance with special conditions 5.A, 5.B, and 5.C shall be submitted to the executive director, OHP, and NAHC within six (6) weeks of the conclusion of field work. No later than six months after completion of field work a final report on the excavation and analysis shall be submitted to OHP and the commission.

E. Monitoring of Construction Activities. All site preparation, grading and construction activities for the proposed development shall be monitored on-site by a qualified archaeologist and Native American monitor. The archaeologist and Native American monitor shall have the express authority to temporarily halt all work should significant cultural resources be discovered. This requirement shall be incorporated into the construction documents which will be used by construction workers during the course of their work.

F. Discovery of Cultural Resources / Human Remains During Post-Archaeological Testing Construction Activities.

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(1) If additional or unexpected archaeological features are discovered during site preparation, grading, and construction activities for approved development other than the archaeological investigation, all work shall be temporarily halted while the permittee complies with the following:

The archaeologist, in consultation with the Native American monitor, shall sample, identify and evaluate the artifacts as appropriate and shall report such findings to the permittee, the city and the Executive Director. If the archaeological resources are found to be significant, the archaeologist, in consultation with the Native American monitor, shall determine appropriate actions, and shall submit those recommendations in writing to the Executive Director, the applicant and the city. The archaeologist shall also submit the recommendations for the review and approval of the Executive Director and shall be prepared in accordance with the provisions outlined in Special Condition 5.C above. Any recommended changes to the proposed development or the mitigation measures identified in the final plan required by Special Condition 5.C. shall require a permit amendment unless the executive director determines that a permit amendment is not required.

(2) Should human remains be discovered on-site during the course of site preparation, grading, and construction activities, immediately after such discovery, the on-site City-selected archaeologist and Native American monitor shall notify the City of Seal Beach, Director of Development Services and the County Coroner within 24 hours of such discovery, and all construction activities shall be temporarily halted until the remains can be identified. The Native American group/person deemed acceptable by the NAHC shall participate in the identification process. Should the human remains be determined to be that of a Native American, the permittee shall comply with the requirements of Section 5097.98 of the Public Resources Code. Within five (5) calendar days of such notification, the director of development services shall notify the Executive Director of the discovery of human remains.

G. Incorporation of Archaeology Requirements into Construction Documents. Special Condition No. 5 of coastal development permit 5-97-367 shall be incorporated in its entirety into all the construction documents which will be used by construction workers during the course of their work as well as all construction bid documents.

7. *Water Quality.*

PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and approval of the Executive Director, a National Pollutant Discharge Elimination System permit ("NPDES"), Storm Water Pollution Prevention Plan, and Structural and Non-structural Best Management Practices for the proposed project, in compliance with the standards and requirements of the California Regional Water Quality Control Board. The applicant shall implement and comply with the water quality measures approved by the Executive Director. Runoff from the site shall be directed to the Los Alamitos retarding basin to the maximum extent feasible. The permittee shall comply with mitigation measures WQ-5 through WQ-10 inclusive as approved by City of Seal Beach City Council resolution 4562.

8. *Hazards*

Mitigation Measures WQ-1, WQ-2, WQ-3, WQ-4, GEO-1, GEO-2, GEO-3, GEO-4, GEO-5, GEO-6, GEO-7, and GEO-8 as shown on Exhibit B of City of Seal Beach City Council Resolution 4562 certifying the Hellman Ranch Specific Plan Environmental Impact Report on September 22, 1997 are hereby incorporated by reference as special conditions of this coastal development permit.

9. Future Construction of Homes on the Mesa

This coastal development permit does not approve development on the lots created by Vesting Tentative Tract Map No. 15402. A future coastal development permit(s) is required for development, such as site preparation, construction of streets, common walls and landscaping, and construction of the actual homes, etc. on the site. Construction spoils, materials, and equipment shall not be placed in any wetland areas.

10. Legal Interest.

PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and approval of the Executive Director, written documentation demonstrating that it has the legal ability to carry out all conditions of approval of this permit.

IV. FINDINGS AND DECLARATIONS

A. Detailed Site and Project Description

The subject site totals approximately 196.6 acres. Of that amount, the applicant owns approximately 183.9 acres (93% of the site). Southern California Edison utility company owns a 7.9 acre easement (4%). The California State Lands Commission owns a parcel totaling 3.4 acres (2%). Finally, the City of Seal Beach owns a parcel totaling 1.4 acres (1%). (see Exhibit 1, p. 3)

The site consists of approximately 160 acres of lowland areas, covered for the most part by an average of five feet of fill. A low marine terrace known as Landing Hill reaches an elevation of 66 feet and creates a distinct upland on the south and east edges of the property. Except for the approximately 11 acre slope comprising most of Gum Grove Park, the upland on the southern edge of the lowland is off-site and is developed with the existing Marina Hill residential area of the City of Seal Beach. About 20 acres of the upland on the east side of the lowlands is on the subject site, forming a mesa, and is currently vacant.

The mesa and Gum Grove Park can be considered to be adjacent to the sea. The lowlands is traversed by a tidal channel which is connected to the San Gabriel River which leads to the Pacific Ocean. Section 30115 of the Coastal Act states, in relevant part:

“Sea” mean the Pacific Ocean and all harbors, bays, channels, estuaries, salt marshes, sloughs, and other areas subject to tidal action through any connection with the Pacific Ocean, excluding nonestuarine rivers, streams, tributaries, creeks, and flood control and drainage channels.

Thus, this tidal channel, which is subject to tidal action with a connection to the Pacific Ocean, meets the definition of “sea” under the Coastal Act.

The subject site is bounded on the west by Pacific Coast Highway (State Route One), on the south by the Marina Hill residential area, on the east by Seal Beach Boulevard, on the north by City of Seal Beach Police and Public Works Departments and the Los Alamitos Retarding Basin, and on the northwest by the Haynes Cooling Channel owned by the City of Los Angeles Department of Water and Power.

1. Subdivision

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There is no existing subdivision on the Hellman Ranch property. (see Exhibit 1, p. 35-39) The applicant is proposing subdivision of a 196 acre site into 9 lots, including further subdivision of one of the lots into 70 single-family residential lots in a private community; construction of a public golf course (including 6.8 acres of freshwater marsh integrated into the golf course) and golf clubhouse; dedication of Gum Grove Park to the City of Seal Beach; 1,600,000 cubic yards of grading (800,000 cubic yards of cut and 800,000 cubic yards of fill); creation of saltwater marsh totaling 28.1 acres (including buffer area) and reservation of 16.2 acres of existing oil production areas for future wetland restoration; construction of interpretive areas and visitor-serving recreation facilities; dedication of public access trails; and extension of Adolfo Lopez Drive

More specifically, the subdivision of the site into 9 lots is proposed under Vesting Tentative Tract Map 15381 as approved by the City of Seal Beach on September 22, 1997. The 9 proposed lots are for; oil production (3 lots comprising a total of 27.5 acres); single family detached residential use in a private community on the mesa adjacent to and west of Seal Beach Boulevard (14.9 acres); Gum Grove Park (11.1 acres), visitor-serving facilities (1.8 acres); golf course and freshwater wetlands (110.1), saltwater marsh wetlands, wetland buffers, and public trails (29.6) acres, and 1.4 acres of City owned land to extend Adolfo Lopez Drive.

2. Residential Development

The subdivision of the 14.9 acre residential site into 70 single-family residential lots (minimum lot size of 5,000 square feet with an average lot size of 6,250 square feet), 7 private open space lots for landscaping (2.08 acres), and a private roadway system IS proposed under Vesting Tentative Tract Map 15402 approved by the City of Seal Beach on September 22, 1997. A gated automobile entry and guardhouse are also contemplated for the proposed private residential development.

3. Wetland Fill

A total of approximately twenty-seven (27) acres of wetlands exist on-site (Coastal Resources Management & Chambers Group, 1996). The proposed 110.1 acre public 18-hole golf course would result in the fill of 17.9 acres of existing wetlands. The proposed wetland creation would also result in the fill of wetlands (9.1 acres).

4. Salt Marsh

A total of 44.3 acres of salt marsh (including buffers) may ultimately be provided as proposed. The applicant is proposing to construct 28.1 acres of salt marsh, including about 2-5 acres of buffers, initially (Phase 1). The applicant is also proposing to reserve two existing areas which currently contain mineral production facilities for potential future wetland creation in two future phases. Phase 2 consists of a mineral production area adjacent to the Haynes Cooling Channel and would be contiguous with the proposed salt marsh. Phase 3 would consist of the westernmost portion of a 19.28 acre mineral production area towards the center of the site. The applicant proposes to set aside a combined total of 16.2 acres of existing mineral production area for potential future expansion of the Phase 1 salt marsh. If all three phases are completed, the entire salt marsh (including buffers) would be 43.5 acres.

The proposed 28.1 Phase 1 salt marsh is comprised of approximately; 1) 9.5 acres of subtidal basin and channels, 2.6 acres of unvegetated mudflat, 2.9 acres of low marsh pickleweed, 8.8 acres of high marsh pickleweed, and between 2 and 5 acres of transition zone/buffers. The buffer areas form an elevated ring around the proposed salt marsh to ensure that potentially contaminated runoff from the golf course does not enter the

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salt marsh. The buffer areas will also serve as the location of Coulter's Goldfield plants transplanted from existing locations which will be impacted by fill. The proposed Phase 1 salt marsh would be connected by an existing culvert to the San Gabriel River. The river water would provide the source of water for the salt marsh.

The maximum tidal range would be approximately 1.5 feet, with a spring low tide at +0.6 feet Mean Sea Level and a spring high tide at +2.1 feet Mean Sea Level. The residence time (i.e., the relative frequency of tidal flushing) would be a maximum of approximately 1.3 days. Proposed tidal zones include Shallow Subtidal (-4.0' to +0.1' relative to Mean Sea Level ("MSL") and is always underwater), Occasionally Exposed-Subtidal (+0.1' to +0.3' MSL), Lower Intertidal (Mudflat; +0.3' to +1.3' MSL), Upper Intertidal (Low Marsh; +1.3' to +1.9' MSL), Super Tidal (High Marsh; +1.9' to +4.5' MSL, the zone above Mean Higher High Water level). Transition areas consisting of a densely vegetated berm to keep out golf course runoff and errant golf balls would serve as a buffer and would be upland areas never subjected to tidal influence.

5. Freshwater Marsh

The applicant is proposing 6.8 acres of freshwater marsh wetlands consisting of a system of five basins connected by pipes. The center of each basin will be open water (10.0 foot depth) and the edges will consist of shallow shelves (0.5 to 1.5 feet deep) providing shallow water habitat. The water sources will consist of an onsite groundwater well and precipitation. The freshwater marsh would be integrated into the middle of the proposed golf course and also serve as a golf course water feature/hazard.

6. Grading

A total of one million, six hundred thousand (1,600,000) cubic yards of grading are proposed. Eight hundred thousand (800,000) cubic yards of grading (cut) would be excavated to construct the salt marsh and freshwater marsh. The 800,000 cubic yards of excavated material would be used for fill for the proposed golf course and clubhouse.

7. State Lands Parcel

The parcel of land adjacent to Pacific Coast Highway currently owned by the California State Lands Commission is contemplated for visitor-serving uses. A City historic building, the Krenwinkle House, may be moved to the site to be used as a historical museum and or interpretive center for the adjacent proposed salt marsh. Also contemplated are 10,000 square feet of visitor-serving commercial uses. Sixty-two (62) parking spaces are shown on the conceptual site plan. A simple interpretive center consisting of a raised platform with displays overlooking the proposed salt marsh is also proposed.

8. Archaeology

The applicant is proposing an archaeological investigation to document the existence of cultural resources in the eleven cultural resources sites identified on the development property. The eleven State-identified cultural resources sites are CA-ORA-256, CA-ORA-260, CA-ORA-261, CA-ORA-262, CA-ORA-263/852, CA-ORA-264, CA-ORA-850, CA-ORA-851, CA-ORA-1472, CA-ORA-1473, and Area D.

The archaeological investigation consists in part of digging 30x30 centimeter square shovel test pits ("STPs") to a maximum depth of 50 centimeters. STPs will be placed at 20 meter intervals on each cultural resource site,

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resulting in approximately 91 STPs. An additional 19 STPs will be dug on selected sites to supplement the sampling of the 91 STPs.

In addition, the proposed archaeological investigation will consist of digging Test Excavation Units ("TEUs"). The proposed TEUs are 1x1 meter square and will be hand excavated at 10 centimeter intervals. A total of 45 TEUs (between 2 and 8 per site) are expected to be dug. The TEUs will be placed on each site based on the results of both the STPs and a ground penetrating radar survey of each site.

9. Golf Course and Clubhouse

The applicant is also proposing a 110.1 acre (excluding the freshwater marsh wetland complex) 18 hole golf course open to the public. The golf course is intended to be of the caliber that could host a Professional Golf Association tournament and charge green fees in the mid-range of fifty dollars (\$50) or so. A golf clubhouse, also to be open to the public, is also contemplated. An extension of Adolfo Lopez Drive across land owned by the City of Seal Beach is also contemplated.

10. Parks and Trails

The applicant is also proposing to dedicate the 11.1 acre Gum Grove Park to the City of Seal Beach. The City currently leases the park, an unimproved nature park with a eucalyptus tree grove, from the applicant. The applicant also proposes to dedicate public trails which would extend from the State Lands parcel to the north and south of the Phase 1 salt marsh and end at viewing nodes along the salt marsh.

B. Ownership and Existing Legal Parcels

As stated above in the Executive Director's note, the applicant has confirmed that there is no existing subdivision of the Hellman Ranch property. (Exhibit 1, pages 35-39) In addition, this parcel is currently utilized for mineral production, of which Hellman Properties owns the entire operating interest. (Exhibit 1, pages 35-39) Further, although Shell Oil (now Signal Hill Petroleum) has a 50% producing interest in APN 980-36-605, Signal Hill Petroleum has no land rights. (Exhibit 1, pages 35-39)

There are several assessor's tax parcels within the Hellman ownership, including assessor's tax parcels for mineral rights. However, County of Orange Assessor's parcels which are utilized for tax purposes are not necessarily the same as legal lots for purposes of the Subdivision Map Act.

While the City has approved Tentative Tract Map 15381 which subdivides the applicant's lot into several lots, this subdivision of the land is not valid until approved by the Commission. The applicant is thus requesting Commission approval of a subdivision of one 196.6 acre parcel in a configuration that would separate the existing mineral production areas from the proposed golf course, wetland and residential areas.

The applicant's ownership interest comes about as the result of a decree of partition filed in Los Angeles Superior Court Case 13527 (Bixby, et. al. vs. Hellman, et.al.). The applicant's ownership should not be confused with the areas of the subject site owned by the California State Lands Commission, the City of Seal Beach Redevelopment Agency, and an easement owned by the Southern California Edison electric utility.

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The southerly boundary of the Hellman property is fixed by the subdivisions that created the existing residential neighborhood of the City of Seal Beach commonly known as Marina Hill. Tracts 1817 and 2590 creating Marina Hill were recorded on December 15, 1955 in Book 82, pages 26-38 (for both tracts) of the Miscellaneous Maps of Orange County. The easterly boundary of the Hellman property is fixed by Seal Beach Boulevard (formerly known as Bay Boulevard, as described in the legal description).

The eastern half of the northeasterly Hellman property line is described in a 1965 record of survey which generally describes the property now occupied by Boeing Company (formerly Rockwell International), except that the southerly portion of this land shown in the record of survey which immediately borders the Hellman property is developed with the City of Seal Beach Police Department, City of Seal Beach Public Works Department, and other City facilities. The western half of the northeasterly Hellman property line is described in the deed from the Lloyd Dinkelspiel estate to the Orange County Flood Control District.

The northwesterly Hellman property line is generally described in the deed from the Hellman family to the City of Los Angeles recorded February 15, 1961 in Book 5629, beginning with page 527, of the Official Records of Orange County.

C. Chapter 3 Coastal Act Policy Analysis

1. Wetlands

Section 30108.2 of the Coastal Act states:

“Fill” means earth or any other substance or material, including pilings placed for the purposes of erecting structures thereon, placed in a submerged area.

Section 30121 of the Coastal Act states:

"Wetland" means lands within the coastal zone which may be covered periodically or permanently with shallow water and include saltwater marshes, freshwater marshes, open or closed brackish water marshes, swamps, mudflats, and fens.

The subject site contains 27.087 acres of scattered wetlands according to a recent wetlands assessment of the site (Coastal Resources Management & Chambers Group, 1996). According to the assessment, the existing wetlands are comprised of 15.91 acres of salt marsh vegetation, 2.026 acres of seasonally ponded water, 7.0059 acres of alkaline flat, and 3.146 acres of tidal channel. The majority of the wetlands are clustered: 1) around the tidal channel which runs through the middle of the property and delivers site runoff to a culvert which connects to the San Gabriel River, or 2) adjacent to the Haynes Cooling Channel at the north edge of the property. (see Exhibit B) The applicant is proposing to fill all of the existing wetlands. The proposed project involves fill of 17.9 acres of the existing wetlands for a golf course, and fill of the remaining 9.1 acres of existing wetlands for wetlands restoration.

a. Background on On-site Wetlands

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The Commission found previously in its approval of coastal development permit 5-89-1087 that, historically (and as recently as the late 1890's), all of the lowland areas of the subject site were part of the 2,400 acre Alamitos Bay wetland complex at the mouth of the San Gabriel River. Over time, however, man-made alterations reduced the size and quality of the wetlands.

Substantial degradation of the wetlands on the Hellman property began with oil production in the 1920's, which resulted in the fill of wetlands for access roads and production facilities. The wetlands were further altered following the rerouting and channelization of the San Gabriel River from 1930-34. Marsh land receded further as canals and levees were built to control water on the property. The construction from 1961-63 of the adjacent Los Angeles Department of Water and Power cooling channel for the upriver Haynes power plant resulted in the deposition of large quantities of fill on the site and additional fill of wetlands.

The City of Seal Beach also allowed fill to be placed on the property during the 1960's and early 1970's, and the Commission's predecessor Coastal Zone Conservation Commission also approved fill activity between 1972-75, according to the findings for permit 5-89-1087. (see Exhibit 7, p. 11) Continued oil production and off-road vehicle use on the site currently contributes to the degradation of the wetland.

(1) Previous California Department of Fish and Game Review

In June 1980, Bob Radovich of the California Department of Fish and Game ("CDFG") prepared "An Assessment of Wetland Resources Within the City of Seal Beach South of the San Gabriel River" at the request of the South Coast Regional Commission, the predecessor to the current Coastal Commission. (see Exhibit 4, p. 11) The assessment described existing vegetation and wetland values and possible issues regarding restoring the wetlands. The assessment indicates that "[i]n general, existing wetland values are quite poor." The assessment concludes, in part, that "[t]he primary value of the subject wetlands lies primarily in terms of what it can be."

Subsequent to this, at the request of the Commission, the CDFG prepared a formal wetlands determination of the subject site ("Determination of the Status for Wetlands Within the City of Seal Beach, Immediately South and East of the San Gabriel River Channel (Ponderosa Seal Beach Wetlands)" dated January 13, 1982) pursuant to Section 30411(b) of the Coastal Act. (see Exhibit 4, p. 2)

The 1982 determination concluded that approximately 25 acres (+ or - 0.5 acres) existed on the site at the time. The 25 acres were comprised of 3.4 acres of brackish water marsh, 18.0 acres of salt flat, and 3.3 acres of open water/estuarine wetland. CDFG determined that all of the on-site wetlands were degraded. Of these, CDFG determined that approximately 23 acres were severely degraded. While Section 30121 of the Coastal Act defines a wetland, the Coastal Act does not define a "degraded" wetland. In its determination, CDFG defined a "degraded" wetland, based on ecological factors, as:

Degraded Wetlands: A wetland which has been altered by man through impairment of some physical property and in which the alteration has resulted in a reduction of biological complexity in terms of species diversity of wetland-associated species which previously existed in wetland areas.

The determination noted, for instance, that bird use of the wetlands was consistently low, even after taking into account the possibility of influence by variations in tidal and weather conditions. The CDFG went on to describe the feasibility of restoring the on-site wetlands. This is discussed below in the section under "Wetland Alternatives".

(2) **Previous Commission Actions**

(A) **1982 Commission Actions**

Ponderosa Homes applied for coastal development permit application 5-82-221 for the construction of 1,000 homes and parks and fill of all the existing on-site wetlands. Staff recommended that the Commission hold a hearing (May 18, 1982) to discuss the proposed development in light of the wetland and seismic hazards constraints. District log book records indicate that the application ended up being withdrawn (Nov. 17, 1982).

The California Department of Fish and Game prepared the previously described 1982 wetlands determination of the site in conjunction with the Ponderosa project,. In addition, the Coastal Conservancy developed a wetlands enhancement plan for the on-site wetlands. The Conservancy plan evaluated several wetland restoration alternatives, also starting with the implicit premise that restoration would work around the development proposed under coastal development permit application 5-82-221.

The consolidation of the on-site wetlands into either an on-site tidal salt marsh or an on-site brackish water marsh near the culvert leading to the San Gabriel River was deemed to be technically feasible. Ultimately, however, the Conservancy determined that these alternatives presented significant problems regarding cost of wetland construction, required changes to the then-proposed Ponderosa Homes project to accommodate the wetlands, and long-term maintenance of the culvert linking the wetland with the salt marsh site.

The consolidation of the on-site wetlands into a brackish water marsh near the Los Alamitos Retarding Basin was considered to be technically feasible. This marsh would essentially be an extension of the seasonal wetland created when the flood control basin is full of winter storm runoff. This wetland alternative would be dependent on runoff, ground-water pumping, and diversion of runoff from the flood control basin for its water supply. Again, however, the Conservancy determined that this alternative would present problems regarding the redesign of the then-proposed Ponderosa Homes project.

The Conservancy concluded that off-site restoration would provide the best chance for creation of a long-term viable and regionally significant wetland in the area. The Conservancy recommended three preferred off-site areas: the Talbert Marsh and Fairview areas of the Santa Ana River, and uplands areas next to and within the Seal Beach National Wildlife Refuge (Anaheim Bay wetlands). However, this conclusion was also based in part on minimizing changes to the then-proposed housing development, costs to the developer, and revenue loss to the City of Seal Beach. In other words, the wetland options were reviewed in part on how they would fit into the then-proposed development, rather than how the development could be changed to accommodate substantial restoration.

The Conservancy presented these wetland alternatives to the Commission as Coastal Conservancy Project #1-82. The Commission approved the Conservancy project in concept with conditions requiring: 1) further study of all alternatives, that data from which was to be presented to the Commission along with the selection of a final site, and 2) conditions addressing the specific alternatives of the on-site wetlands near the culvert, on-site wetlands near the flood control basin, and the Seal Beach wildlife refuge site. Since the Ponderosa Homes project was never undertaken, neither were any of the Conservancy project wetland restoration alternatives.

(B) **1989-1990 Commission Actions (MOLA)**

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On November 14, 1989, the Commission denied permit application 5-89-514 by the MOLA Corporation to construct 355 homes with both wetland fill and wetland restoration. The Commission then waived the 6 month period required by the Regulations to rehear a denied project. On January 12, 1990, the Commission approved coastal development permit 5-89-1087 in part for construction of 355 homes, 4 acres of wetland fill, 36.8 acres of wetland habitat, and 1.3 million cubic yards of cut and 1.4 million cubic yards of fill. (see Exhibit 7 for Revised Findings)

As a condition of approval, the Commission required the proposed wetland restoration area to be expanded by four acres to further mitigate the four acres of fill. The four acre expansion would have; 1) removed planned homes that would have intruded into planned wetland, 2) removed structural development from a highly liquefiable site, 3) further ensured the success of the planned wetland by creating additional wetland and buffer area, and 4) allowed the Port of Long Beach to use the site for mitigation credits. The MOLA project was also never undertaken.

b. Importance of Wetlands

One of the main reasons for preserving, expanding, and enhancing Southern California's remaining wetlands is because of their functions. First and foremost, wetlands provide critical habitat, nesting sites, and foraging areas for threatened or endangered species. Wetlands also serve as migratory resting spots on the Pacific Flyway, a route in which birds travel from Canada and points north to Mexico and points south. In addition, wetlands also serve as natural filtering mechanisms to help remove pollutants from storm runoff before the runoff enters into streams and rivers leading to the ocean. Further, wetlands also serve as natural flood retention areas.

Another critical reason for preserving, expanding, and enhancing Southern California's remaining wetlands is because of their scarcity. As much as 75% of coastal wetlands have been lost. As described earlier, the 27 acres of existing on-site wetlands are part of only 150+ acres which remain of the former 2,400 acre Alamitos Bay wetland complex. Therefore, it is critical to maintain and enhance the remaining wetlands to ensure that wetlands exist to carry out the functions described above.

c. 30233(a) Analysis

Section 30233 of the Coastal Act states, in relevant part:

(a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:

(1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.

(2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.

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(3) In wetland areas only, entrance channels for new or expanded boating facilities; and in a degraded wetland, identified by the Department of Fish and Game pursuant to subdivision (b) of Section 30411, for boating facilities if, in conjunction with such boating facilities, a substantial portion of the degraded wetland is restored and maintained as a biologically productive wetland. The size of the wetland area used for boating facilities, including berthing space, turning basins, necessary navigation channels, and any necessary support service facilities, shall not exceed 25 percent of the degraded wetland.

(4) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.

(5) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.

(6) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.

(7) Restoration purposes.

(8) Nature study, aquaculture, or similar resource dependent activities.

(c) In addition to the other provisions of this section, diking, filling, or dredging in existing estuaries and wetlands shall maintain or enhance the functional capacity of the wetland or estuary. Any alteration of coastal wetlands identified by the Department of Fish and Game, including, but not limited to, the 19 coastal wetlands identified in its report entitled, "Acquisition Priorities for the Coastal Wetlands of California", shall be limited to very minor incidental public facilities, restorative measures, nature study, commercial fishing facilities in Bodega Bay, and development in already developed parts of south San Diego Bay, if otherwise in accordance with this division.

Section 30233 of the Coastal Act regulates the proposed fill of wetlands. The fill of wetlands may only be approved if: (1) the proposed fill is for one of the eight allowable uses delineated in Section 30233; (2) there is no feasible less environmentally damaging alternative; and (3) all feasible mitigation measures have been provided to minimize adverse environmental effects.. The consistency of the proposed project with these 3 standards for wetland fill will be discussed below.

(1) Proposed Development is Not One of the Eight Allowable Uses

Allowable development within wetlands is governed by Section 30233(a) of the Coastal Act. Section 30233(a) limits development in wetlands, including diking, filling or dredging, to eight allowable uses. Since a golf course is not expressly listed as one of the eight allowable uses under Section 30233(a), the proposed fill of 17.9 acres of existing wetlands to construct the proposed golf is not allowable.

(A) Section 30233(a)(7) - Fill for Restoration Purposes

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Section 30233(a)(7) of the Coastal Act allows fill of existing wetlands for wetland restoration purposes. The applicant contends that the revenue generated by the proposed golf course is needed to fund the construction of the proposed wetland restoration.

The proposed lowland development, specifically the golf course and the wetlands restoration, involves fill of all 27 acres of on-site wetlands. Of the total 27 acres of wetland fill, 17.9 acres of fill would result from the proposed golf course, and 9.1 acres of fill would result from the enhancement of the proposed salt marsh and freshwater marsh wetlands. The applicant is proposing to construct a total of 44.3 acres of restored wetlands. 28.1 acres would be proposed in Phase 1 (at the same time as the construction of the proposed golf course) and the remaining 16.2 acres, which will be located in areas where there is currently active oil activity, may be constructed at some undetermined point in the future once the oil activity has ceased. Of the 28.1 acres of Phase 1 wetland creation, some 2 to 5 acres is upland/transition/berm areas not periodically covered by water through tidal action and thus is not actual wetlands. Therefore, only approximately 23 to 25 acres of actual tidally influenced wetlands would be created.

Although the applicant contends that the purpose of the proposed wetland fill is for wetlands restoration purposes, 17.9 acres of fill would result from the proposed golf course. Only 9.1 acres of the wetlands fill is to enhance salt marsh and freshwater marsh wetlands and allow for approximately 2 to 5 acres of non-wetland buffer area.

The Commission finds that to allow the ultimate conversion of the site's existing wetlands to other uses by approving fill as fill for restoration purposes, the proposed fill must: (1) be necessary to accomplish the wetland restoration goals and objectives, and (2) result in substantially greater habitat values than exist at present. The Commission also notes that its staff's 1994 Procedural Guidance for the Review of Wetland Projects in the Coastal Zone states that "filling wetlands for non-permitted uses is allowed only where restoration is the sole purpose of the project."

All of these factors were satisfied in the Commission's action approving the restoration and enhancement of Batiquitos Lagoon in the City of Carlsbad in San Diego County (CDP 6-90-219). The Commission utilized these factors to ensure that the restoration and enhancement project was responsive solely to the needs of the lagoon.

(i) Necessity of the Project for Restoration

The applicant contends that the proposed public golf course configuration and size is specifically required to generate a sufficient level of greens fees to allow for the funding of the construction, establishment, and maintenance of the proposed wetlands. The proposed public golf course, at approximately 6,000+ yards in length, is intended to be a regulation length golf course which can justify charging mid-range green fees (about \$50 or so) which are necessary to provide revenue for the proposed wetlands construction.

The applicant further contends that the amount of Phase 1 wetlands creation cannot be increased because it would reduce the size of the proposed golf course to a point at which the golf course can no longer charge adequate green fees to pay for wetlands creation and maintenance.

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The alternatives evaluated in the final environmental impact report ("FEIR") certified by the City¹ for the proposed project demonstrate that the proposed project is driven by the needs of the golf course and housing rather than the needs of the wetland. As described in the FEIR, the proposed project is neither physically nor financially necessary to accomplish defined wetland restoration goals and objectives. According to the FEIR, it is the residential component rather than the golf course which generates the revenue necessary to meet the conservation goals and objectives. Moreover, the FEIR discussion admits that the overall project is envisioned primarily to meet the local need for a golf course, with the restoration being a secondary purpose.

The FEIR for the proposed project did not even consider an evaluation of feasibility of an alternative that would have fewer homes than the proposed 70 homes. Page 7-2 of the FEIR, Volume I, Section 7.0 - Project Alternatives, states:

The creation and restoration of the wetlands will involve construction and engineering costs totaling approximately \$3,000,000 [three million dollars]. At the same time, the remaining areas of the property provide limited opportunities for revenue generation. Gum Grove Nature Park would be dedicated to the City for preservation in perpetuity. The proposed public golf course alone would not be capable of generating sufficient revenue to fund the wetland creation/restoration. Golf courses of this type are generally unable to produce a surplus of revenue after accounting for the costs of constructing improvements, on-going maintenance and operations costs, and a reasonable rate of return on investment, even without calculating land costs. A residential component is therefore required for the project to generate the revenue necessary to meet its conservation goals and objectives. Based on projected costs and returns, it was determined that development of 70 single-family units represents the minimum number of units feasible that would allow for both a reasonable return and the attainment of the conservation/recreation uses contemplated in the proposed Hellman Ranch Specific Plan. [emphasis added]

In FEIR Volume II - Technical Appendices, Page 3 of Appendix D (the Final Conceptual Wetland Restoration Plan for the Hellman Ranch Specific Plan, dated November, 1996) states that:

The overall project is envisioned to meet the local need for a golf course, which will help to make the project economically viable while minimizing impacts to the existing degraded wetlands. The golf course will also serve as the "economic engine" to fund restoration of wetlands at the site. [emphasis added]

On Page 3 of its May 27, 1997 letter to the City of Seal Beach commenting on the contradictory nature of these two statements in the FEIR, staff stated that "... the FEIR should clarify which development component, if any, of the proposed specific plan is necessary for the proposed restoration of the on-site wetlands to occur". In responding to staff's comment, Page 3-4 of the FEIR Volume V, in Response to Comments S3-4, states:

The Hellman Ranch Specific Plan provides for comprehensive planning of the Hellman Ranch property.. With that in mind, the Development Plan includes a public golf course and associated residential development which together provide the economic framework to fund the wetlands restoration project and dedication of open space and conservation areas for public use.

¹ The FEIR in question was certified on September 22, 1997 pursuant to City of Seal Beach City Council Resolution 4562. The referenced sections of the FEIR regarding project alternatives were utilized by the City in order to certify the FEIR. Therefore, the Commission may rely on this information in choosing among alternatives.

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Thus, although both development components may provide a source of revenue, because the proposed golf course itself will not generate sufficient revenue, it is the 70 houses and not the proposed golf course that is necessary to fund the restoration. Therefore, because the proposed golf course is in no way necessary to fund the restoration, it cannot be considered as part of a "restoration project" or financially or physically necessary to fund restoration.

(ii) Increase in Habitat Values/Mitigation Ratios

In order for the wetland fill to be consistent with Section 30233(a)(7) of the Coastal Act, a wetlands restoration project must be the primary purpose for the fill and must result in a significant amount of wetlands being created upfront in conjunction with the fill of existing wetlands. As proposed, the ratio of wetland fill to wetlands creation is actually less than 1:1 because up to 2 to 5 acres of the proposed 28.1 acres of wetlands is non-wetland buffer area which cannot be included in the proposed wetland acreage.

Another reason the wetlands acreage proposed by the applicant cannot be considered wetlands restoration which results in substantially greater habitat values is that the track record of past wetland creation projects indicates a less than optimum success rate. The success rate of wetlands restoration is less than 100%. A created wetland that never establishes itself cannot be considered wetlands restoration. If an existing wetland, even though it may be degraded, is filled and therefore permanently lost and its replacement wetland never establishes, then there is a net loss of wetlands. In addition, given the less than 100% success rate of wetland restoration projects, the proposed project cannot assure that it will result in the proposed 3.6:1 increase in habitat values over presently existing values.

To compensate for the potential that a wetlands creation or restoration project is not successful, the Commission has traditionally required a 4:1 mitigation ratio; i.e., the creation of four acres of wetlands for every one acre of wetland which is filled. Creating more wetlands than would be lost increases the potential that the number of acres of created wetlands which successfully establish, in the end, is at least equal to the number of wetlands filled. This is because the success rate for wetland restoration projects is not 100%, and there is a chance that less than the restored area will successfully establish.

However, the applicant's proposal for 28.1 acres of Phase 1 upfront salt marsh creation, minus 2-5 acres of buffer area, results only 23-26 acres of wetland area which is less than a 1:1 mitigation ratio. The Commission finds that the proposed upland buffer areas shall not be counted as wetland area because they will never be covered by tidal water due to their high elevation. The Commission acknowledges that the proposed buffer areas may support wetland-type plants. This is because salt water from the adjacent area which will be periodically covered by tidal water will seep into the soil and roots of the plants above water level, thus providing salinity that is conducive to wetland-type plants. However, the Coastal Act definition of wetlands is those areas periodically or permanently covered with shallow water. These upland buffer areas will never be periodically or permanently covered with shallow water, because: 1) they are above the reach of tidal water, and 2) they are sloped so they will not retain rainwater and allow it to pond. Therefore, the proposed upland buffer areas are not "wetlands" under the definition in Section 30121 of the Coastal Act. Further, if less than 100% of the 23-26 acres of actual salt marsh proposed successfully establishes, there will be a net loss of wetlands. Additionally, if the proposed 3.6:1 increase in habitat values turns out to be less than 3.6:1, then the additional acreage provided by a higher acreage ratio would offset the less than expected increase in habitat values.

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The applicant is also proposing at some future point in time to make available existing mineral production areas near the proposed wetlands as additional area for potential future wetland restoration once mineral production ends. The applicant proposes this potential future wetland expansion as mitigation, as opposed to decreasing the size of the proposed golf course in order to avoid wetland fill. However, the availability of a potential mitigation site in no way assures that the project will result in substantially greater habitat values than exist at present. Also, to wait at some future point in time for potential wetland restoration on the mineral production area would result in an indefinite temporal loss of wetlands that would preclude wetland functions from occurring during the indefinite period of time. Temporal loss of wetland resources, for example, would result in adverse effects on the wildlife which use the existing wetlands for foraging and habitat purposes. Further, there is no guarantee that the future wetland expansion would take place.

The applicant argues that their reservation of existing mineral-production areas for potential future wetland restoration is no different than what the Commission approved under the Mola project in 1990. The Commission did approve a phased wetland project that would result in 25.6 acres of upfront wetlands, with the potential for 11.2 additional acres in the future. (see Exhibit 7 for Revised Findings for coastal development permit 5-89-1087). In this respect, the two projects are similar. However, the fundamental difference is that under permit 5-89-1087, only four acres of the existing degraded and severely degraded wetlands would be filled, while the remaining 21.6 acres would be restored. Under the proposed project, 17.9 acres of existing wetlands would be filled for a non-allowable golf course, while only 9.1 acres of the existing wetlands would be restored. Thus, the proposed project is filling four times more of the existing wetlands than under permit 5-89-1087.

The Commission finds that, for all of the reasons discussed above, rather than proposing a restoration project, the applicant is instead proposing to provide mitigation for the fill of a golf course. The project proposed by the applicant is not a restoration project per se; it is a multiple-use residential recreational development with a mitigation component. The 17.9 acres of fill at issue here results from a golf course, not from wetland restoration. Recharacterizing mitigation as "fill for restoration purposes" can not be used as a means to circumvent the strict limits in Section 30233(a) on the purposes for which fill may be placed in a wetland. It is not enough for an otherwise impermissible use of proposed fill to be allowed as fill for restoration purposes simply because an applicant may provide a substantial amount of mitigation. Otherwise, the limits of Section 30233(a) on the uses of fill would have little meaning and the limited amount of wetland acreage that remains in the coastal zone would be viewed as developable for any use so long as mitigation is provided. The result would likely be the rapid diminishment of the remaining wetlands in the coastal zone.

(iii) Conclusion - Proposed Project is Not Restoration

Therefore, the Commission finds that the fill of 17.9 acres of existing wetlands for the proposed golf course cannot be considered allowable under Section 30233(a)(7) because: (1) the proposed fill of wetlands for a golf course is not physically or financially necessary to accomplish wetland restoration goals and objectives; (2) the wetland acreage proposed constitutes mitigation rather than restoration because the proposed 17.9 acres of fill at issue results from fill for the golf course and not from fill for restoration purposes; and (3) the proposed wetland acreage will not result in substantially greater habitat values than exist at present.

Therefore, the Commission attaches Special Condition No. 1 which eliminates the portion of the proposed project involving the fill of wetlands for a golf course.

(B) Section 30233(a)(3) & 30411(b) - Fill for Boating Facilities

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Section 30233(a)(3) of the Coastal Act allows wetland fill in accordance with the following:

(3) In wetland areas only, entrance channels for new or expanded boating facilities; and in a degraded wetland, identified by the Department of Fish and Game pursuant to subdivision (b) of Section 30411, for boating facilities if, in conjunction with such boating facilities, a substantial portion of the degraded wetland is restored and maintained as a biologically productive wetland. The size of the wetland area used for boating facilities, including berthing space, turning basins, necessary navigation channels, and any necessary support service facilities, shall not exceed 25 percent of the degraded wetland. (emphasis added.)

Section 30411 of the Coastal Act states, in relevant part:

(b) The Department of Fish and Game, in consultation with the commission and the Department of Boating and Waterways, may study degraded wetlands and identify those which can most feasibly be restored in conjunction with development of a boating facility as provided in subdivision (a) Section 30233. Any such study shall include consideration of all the following: (emphasis added.)

(1) Whether the wetland is so severely degraded and its natural processes so substantially impaired that it is not capable of recovering and maintaining a high level of biological productivity without major restoration activities.

(2) Whether a substantial portion of the degraded wetland, but in no event less than 75 percent, can be restored and maintained as a highly productive wetland in conjunction with a boating facilities project.

(3) Whether restoration of the wetland's natural values, including its biological productivity and wildlife habitat features, can most feasibly be achieved and maintained in conjunction with a boating facility or whether there are other feasible ways to achieve such values.

Section 30233(a)(3) provides that if a wetland is identified as degraded by the California Department of Fish and Game ("CDFG") pursuant to Section 30411(b), boating facilities may be allowed if in conjunction with such boating facilities, a substantial portion of the degraded wetland is restored and maintained as a biologically productive wetland. Further, the boating facility is limited to 25 percent of the degraded wetland. Section 30411 authorizes the CDFG to conduct a study to determine whether the degraded wetland can most feasibly be restored in conjunction with a boating facility.

At the outset, the Commission notes that Section 30411 of the Coastal Act is not itself a basis for approval; Section 30411 merely authorizes a study by the Department of Fish and Game, with reference to a possible approval of a boating facility under Section 30233(a)(3) of the Coastal Act. The purpose of the study is to determine whether, using the three factors set forth in Section 30411(b), a degraded wetland can most feasibly be restored in conjunction with a boating facility.

(I) Factors Comprising a 30411(b) Study

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As described previously, at the request of the Commission and pursuant to Section 30411(b) of the Coastal Act, the California Department of Fish and Game ("CDFG") studied the on-site wetlands in the early 1980's, in conjunction with the development proposed under coastal development permit application 5-82-221 (Ponderosa Homes). CDFG's final January 13, 1982 report analyzes the three factors as required by Section 30411(b) in the determination if the degraded wetlands can most feasibly be restored in conjunction with the development of a boating facility.

The first factor in determining whether a degraded wetland can most feasibly be restored in conjunction with a boating facility requires CDFG to consider whether the studied wetland is so severely degraded that the wetland cannot recover and maintain a high level of biological productivity without major restoration activities. CDFG determined that:

It is our position that restoration and enhancement may be accomplished through development of adjacent property and through a consolidation project involving that wetland area south of the tidal channel. It appears that such a project may not entail a relatively major expenditure of funds nor would it require major restoration since it could be accomplished by merely designating strategically located fill borrow sites for fill which would be required in certain developable areas. (emphasis added)

The Commission notes that the CDFG found that the best alternative for the site was a restoration project in which restoration was accomplished through development of adjacent property, not development of the degraded wetlands themselves.

The second factor in determining whether a degraded wetland can most feasibly be restored in conjunction with a boating facility asks whether no less than 75% of the wetland can be restored and maintained as a highly productive wetland in conjunction with a boating facility. CDFG concluded that a boating facility is not a viable option. The first obstacle to constructing a boating facility is the fact that the subject site is not immediately adjacent to the San Gabriel River. Therefore, a boat passage cannot simply be cut into the San Gabriel River levee, as would be the case if the site was immediately adjacent to the river.

Instead, a channel would have to be dug across the Haynes Cooling Channel which is located between the project site and the San Gabriel River. A channel to provide an entrance to a boating facility on the project site would involve both major construction costs and alteration of the cooling channel. As long as the power plant served by the cooling channel remains in operation, it is unlikely that the Los Angeles Department of Water and Power would allow the channel to be altered for construction of a boat access channel to the subject site.

Another obstacle to constructing a boating facility on the subject site involves the bridges which cross the San Gabriel River. Heading south on the river from the subject site leads directly to the ocean at the river's mouth. However, south of the subject site, the Pacific Coast Highway (State Route 1) bridge and, further south, the Marina Drive bridge cross the river. Both are too low in their current configurations to allow most boats to pass underneath.

A connection to the ocean from the San Gabriel River through Alamitos Bay is also not feasible. This would involve heading north on the river and cutting a connecting channel to Alamitos Bay. In addition, the Westminster Avenue bridge across the river north of the subject site would block boat traffic. Studebaker Road would block any connection between the river and Alamitos Bay.

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The third factor in determining whether a degraded wetland can most feasibly be restored in conjunction with a boating facility is whether restoration of the wetland values can most feasibly be achieved in conjunction with a boating facility or whether there are other feasible ways to achieve such values. Since the CDFG concluded that a boating facility was not a feasible option in its 1982 designation of the existing wetlands as degraded, it evaluated other means to achieve restoration.

The specific 1982 restoration proposal of CDFG involved the filling of an 8.1 acre wetland area located southeast of the on-site tidal channel and the creation of an 8.1 acre wetland northwest of the tidal channel. The CDFG concluded that the existing 8.1 acre wetland southeast of the tidal channel would continue to be degraded if the then-proposed adjacent development were constructed. However, caution should be used in relying on the 1982 CDFG determination that the existing on-wetlands are degraded and the alternatives contained in the determination because: (1) the wetlands consolidation advocated by the CDFG would still have resulted in fill of wetlands for a non-allowable use (i.e., homes); and (2) the determination is more than fifteen years old.

In terms of precedent, the applicant contends that, pursuant to Sections and 30233(a)(3) and 30411 of the Coastal Act, allowing fill of wetlands officially-designated "degraded" by the California Department of Fish and Game ("CDFG") would not be precedent setting because there are only five wetlands officially designated as "degraded", one of which is the subject site and all of which are in Southern California. Thus, the applicant is arguing that there are only a limited amount of wetland sites which might be affected by the Commission decision in this instance. However, there is nothing to prevent CDFG from designating additional wetlands as degraded, either in Southern California or elsewhere in the coastal zone. Therefore, while the number of officially-designated degraded wetlands is currently fixed at five, the number could rise in the future, especially as other wetlands are affected by adjacent development and potentially decline in value to the point where they can be officially designated as degraded. In addition, the five existing officially-designated degraded wetlands provide significant potential for substantial, large-scale restoration. Four of the five (Ballona, Bolsa Chica, Hellman, and Los Cerritos) have been recently or are currently the focus of controversial development proposals involving wetland fill. The fifth (Banning Ranch in Newport Beach) is designated for development at some future point. Because it is adjacent to the non-degraded Talbert Marsh and was once part of the Santa Ana River mouth historic wetland complex, it provides the potential to be part of a significant restored wetland that could be jeopardized by wetland fill for non-allowable uses.

(ii) Compliance with Sections 30233(a)(3) and 30411 / Intrusiveness of Use

Section 30233(a) provides that fill must be for one of eight enumerated uses specified in that section. One of those 8 uses allows fill of wetlands which have been designated as degraded by the CDFG for boating facilities if, in conjunction with that fill, a substantial portion of the degraded wetland (75% or more) is restored and maintained as a biologically productive wetland. Section 30411, which is not itself a basis for approval, authorizes the CDFG to conduct a study to determine whether the degraded wetland can most feasibly be restored in conjunction with a boating facility.

As stated above, the CDFG has designated the existing wetlands on the subject site as degraded and severely degraded, pursuant to Section 30411. Further, the CDFG found that boating facilities were not feasible at this site. Since the CDFG determined that a boating facility was not feasible, the applicant argues that Section 30411 authorizes fill for other less intrusive uses that are not expressly enumerated by Section 30233(a). However, in this case, the use proposed by the applicant is not less intrusive than a boating facility even though the applicant has proposed a golf course which provides a form of open space. Thus, even if the Commission were able to rely on Sections 30233(a)(3) and 30411 to approve a use other than a boating facility and was not

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limited to the 8 uses enumerated in Section 30233(a), such a use would have to be less environmentally intrusive than a boating facility.

Section 30233(a)(3) prescribes that the amount of wetland which may be filled for a boating facility shall not exceed 25% of the area of the degraded wetland. Section 30411(b)(2) states that in considering whether it is feasible to restore a degraded wetland in conjunction with a boating facility, no less than 75% of the degraded wetland shall be restored.

Under the applicant's proposed project, 18 out of 26, or 66%, acres of the existing wetlands would be filled to accommodate the proposed golf course. This 66% far exceeds the 25% allowed by Section 30233(a)(3). Therefore, even if the Commission could approve uses other than those enumerated in Section 30233(a), the proposed golf course is not less intrusive than a boating facility pursuant to Section 30233(a)(3).

As a point of comparison, in the 1989-90 Mola project on the subject site approved by the Commission under permit 5-89-1087, only four of the existing on-site acres of wetlands, or 16% of the existing wetland acreage, would be filled, while the remaining 21.6 existing acres would be restored. Thus, it is notable that the Mola project would have met the requirement of Section 30233(a)(3) that no more than 25% of a degraded wetland can be filled for a boating facility. In contrast, the proposed project would fill 66% (17.9 acres out of 27) of the existing wetlands for a non-allowable use, much more than the 25% allowed under Section 30233(a)(3).

Further, the use of Section 30411 to justify the fill of wetlands for uses other than those permitted under Section 30233 of the Coastal Act was specifically rejected by a San Diego Superior Court in Bolsa Chica Land Trust v. CCC. In that discussion, the court specifically rejected the Commission's conclusion that Sections 30233(a) and 30411(b), read conjunctively, allowed a use that is not one of the eight enumerated uses in Section 30233(a). In that case, the Bolsa Chica applicant was proposing homes in wetlands.

The trial court in Bolsa Chica Land Trust v. CCC held that only uses enumerated under Section 30233(a) are allowable uses in wetlands. The court reasoned that Section 30233(a) limits filling of wetlands to eight enumerated uses and residential use (in this case a golf course) is not one of them. Section 30411 authorizes a study evaluating the restoration of degraded wetlands in conjunction with a boating facility or, where a boating facility is not feasible, in conjunction with other feasible ways to achieve such values. However, these "other feasible ways" to restore degraded wetlands must also be one of the specific uses enumerated under Section 30233(a).

The court also held that other feasible ways to achieve restoration must be less intrusive than a boating facility. Section 30233(a)(3) requires that a boating facility not exceed twenty-five percent (25%) of the degraded wetlands and Section 30411(b)(2) requires that not less than seventy-five percent (75%) of the degraded wetlands be restored. An "other feasible way" of restoring degraded wetlands thus should occupy less than 25% of the wetlands and should restore more than 75% of the wetlands in order to be less intrusive than a boating facility. Further, an "other feasible way" of restoring degraded wetlands should also be the least environmentally damaging alternative. As discussed herein, the proposed golf course is not less intrusive than a boating facility nor it is the least environmentally damaging feasible alternative to achieve restoration of the existing degraded wetlands on the Hellman Ranch.

(iii) **Use of Wetlands Interpretive Guidelines**

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Finally, the Commission acknowledges that the Commission's Interpretive Wetland Guidelines, adopted in 1981, allow for other feasible ways of restoration if a boating facility is not feasible.

The Commission's 1981 wetland Guidelines contain a discussion of approvability under Section 30233(a)(3). The Guidelines rely upon the language contained in Section 30411(b)(3) which provides that in determining whether restoration can most feasibly be achieved in conjunction with a boating facility, the CDFG shall consider whether there are other feasible ways to achieve such values.

The Guidelines expand upon the language contained in Section 30411(b)(3) by interpreting the phrase "whether there are other feasible ways to achieve such values" as providing another permissible use in a degraded wetland rather than a method of considering whether the degraded wetland could most feasibly be restored in conjunction with a boating facility.

The Guidelines state that "other feasible ways" include only less environmentally damaging alternative restoration projects which may include uses not permitted in Section 30233. So according to the Commission's Guidelines' interpretation of Section 30233(a)(3), if a boating facility is not feasible in a degraded wetland, restoration may involve a priority use such as a visitor-serving recreation facility if such restoration alternative is a less environmentally damaging restoration alternative than a boating facility alternative. The less environmentally damaging restoration alternative must also satisfy the requirement stated in Section 30411(b)(3) that no less than 75% of the degraded wetland is restored and maintained as a highly productive wetland.

However, the Commission's Guidelines do not provide a legal basis for approval. The Guidelines only reflect what the Commission in 1981 thought was an appropriate way to interpret the Coastal Act. The Guidelines were never adopted as binding regulations by the Office of Administrative Law and are not a substantive standard against which the Commission measures approvability.

(v) **Conclusion (Sections 30233(a)(3) and 30411(b))**

Therefore, the Commission finds that the proposed project cannot be considered an allowable use under Sections 30233(a)(3) and 30411 of the Coastal Act even though a boating facility on the subject site is considered infeasible. Thus, the Commission attaches Special Condition No. 1 which eliminates the portion of the proposed project involving the fill of wetlands for a golf course.

(2) Feasible Project Alternatives

Section 30233(a) also requires a determination that there is no feasible less environmentally damaging alternative to the proposed wetland fill. Coastal Act section 30108 defines "feasible" as:

Feasible: Capable of being accomplished in a successful manner within a reasonable period of time taking into account economic, environmental, social, and technological factors.

(A) Restoration of a Substantial Portion of the Lowlands

The lowlands portion of the subject site was historically part of the Alamitos Bay wetland complex at the mouth of the San Gabriel River. The applicant is proposing to create a 28.1 acre salt marsh complex upfront and reserve existing mineral production areas as sites for potential future wetland creation. If, as proposed, 16.2 acres of mineral production sites are made available for wetland restoration, then the amount of wetlands would

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total approximately 43.5 acres. This amount of 43.5 acres is less than half the total of the lowlands area. A substantially larger than proposed amount of the lowlands can feasibly be restored to wetlands. Also, a variety of configurations of habitat types, locations, and designs can be considered other than the one proposed.

(i) **Factors to Consider for Substantial Restoration**

There are four factors to consider in determining whether a site is a candidate for substantial tidal wetland restoration; i.e., restoration of a significant amount of acreage.

First, there must be significant potential benefits. Paradoxically, those areas of historical wetlands that currently bear the least resemblance to a well-functioning tidal slough are often the best candidates for restoration because there may be the greatest increase in habitat value per dollar spent. The historical wetlands at Hellman Ranch are degraded, severely degraded, or no longer even fit regulatory definitions of wetlands. However, far from disqualifying it, this degraded state actually makes Hellman Ranch a prime candidate for substantial wetland restoration.

A second factor that profoundly affects restoration potential is the character of the soil. The sediments that make up tidal wetlands have a high proportion of fine silt and clay particles. Therefore, it has proven difficult to create or restore wetlands from coarse terrestrial (i.e., non-marine influenced) soil. Such physical habitats drain rapidly, do not retain organic materials or added nutrients, and do not develop the anaerobic character of natural marshes. At Hellman Ranch, most of the fill came from other areas of the historic Alamitos wetlands. Much of the existing salt marsh is above the tidal zone and only sees freshwater. This material is appropriate for restoration activities because the soil has retained the salt fine-grained characteristics of the parent historic marsh. This is a significant contribution to the restoration potential of the site.

A third factor that contributes to restoration potential is the hydrological connection to marine waters. In general, a large tidal range and a rapid exchange of water with the ocean improve restoration potential. Nevertheless, many successful restoration efforts in California have been based on a muted tidal regime because of a need to avoid flooding of nearby housing or due to lost tidal connection. At Hellman Ranch, the tidal connection has been reduced to a long 4-foot diameter pipe. With just this existing pipe, the applicants have demonstrated the feasibility of restoring something between 28 and 44 acres of wetland. As the area increases, the tidal range decreases and the time required for water exchange increases. Functioning could be improved if the spatial layout of the restoration project were not constrained by the presence of the golf course. In addition, the addition of a larger pipe would enable a more significant and substantial restoration on the site. For example, without any spatial constraints, instead of a series of relatively unnatural tidal basins, restoration could feasibly take the form of a series of naturally dimensioned tidal channels that would be self-maintaining.

The fourth important consideration is technical feasibility. In the case of the Hellman Ranch, this is mainly a question of the feasibility of improving the hydrological connection to marine waters. Previous applicants (i.e., Mola under permit 5-89-1087) believed adding an 8-foot diameter pipe was feasible both from a technical and permitting standpoint. (see Exhibit 7) Compared to restoration efforts at Batiquitos Lagoon and Bolsa Chica, this would be a relatively modest undertaking. In addition, according to staff communications with Moffatt & Nichol regarding the feasibility analysis done for the Port of Long Beach, additional connections to the San Gabriel River would result in additional flow and greater tidal range, providing increased wetland values and the potential for a much larger restoration area.

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In summary, substantial wetland restoration at the Hellman Ranch site is feasible because: (1) there is an opportunity for a large increase in habitat functioning, (2) the site was historically a wetlands, (3) since much of the fill that degraded the site was from other wetlands, the soil is appropriate for wetland restoration, and (4) a feasible increase in the hydrological connection to the ocean would produce sufficient tidal flow to support a much larger wetland area than is currently proposed.

(ii) **Feasibility of Existing and Additional/Larger Tidal Connections**

The Commission acknowledges that providing a suitable tidal connection to the San Gabriel River (and ultimately the ocean) is a key issue in determining feasibility. The applicant claims that because the applicant does not own the land under which the culvert lies, it is not feasible for the applicant to consider the alternative of enlarging the culvert or providing additional tidal connections because the applicant does not own the land upon which larger or additional tidal connections would be constructed.

However, the applicant's claim is contravened by the final environmental impact report ("FEIR") Alternatives analysis for the Hellman project which includes Alternative 1 that would restore 86 acres of wetland on site. (see Alternative No. 1: Wetland Mitigation Bank; Exhibit 11) This alternative would necessitate additional or enlarged tidal connections and was not rejected based on an inability to provide suitable tidal connections. In fact, the applicant's own restoration plan addendum discusses the option of multiple connections to the San Gabriel River and the original restoration plan for the proposed project states that an optional connection is via the adjacent Haynes Cooling Channel. (FEIR, Volume II, Appendix D, Page 17)

In addition, although the applicant does not own the land upon which larger or additional tidal connections would be constructed, it is reasonable that the applicant could acquire a right to use such land given their existing ability to use the culvert and keep it clean from debris. In fact, the applicant's February 1998 addendum to the November 1997 wetland restoration plan indicates that an additional or larger connection will be necessary for the oil-production areas to be restored as part of the applicant's overall restoration plan.

The applicant's February 1998 addendum to its November 1997 wetland restoration plan concludes that the existing culvert, which is the proposed tidal connection between the San Gabriel River and the proposed wetlands, may not be completely adequate for the proposed ultimate restoration of 44.3 acres (including both the proposed upfront 28.1 acres and 16.2 acres of mineral production area for future wetland expansion), particularly in terms of tidal range.

Specifically, the February 1998 addendum states that:

Implementing Phases 2 and 3 will decrease the tidal range of the marsh established in Phase 1. This may adversely affect wetland habitat, which will have colonized in response to the Phase 1 tidal elevations. The habitat will have to naturally adjust to the modified tidal range at each Phase. The effect generated from Phase 1 to Phase 2 may not be significant, but the effect from Phase 1 to Phase 3 is more pronounced.

The applicant's study then goes on to recommend that a restoration project: 1) provide multiple connections to the San Gabriel River at Phase 3 to maintain the initial tidal range of Phases 1 and 2, or 2) not include Phase 3 in the salt marsh. Therefore, the Commission finds that the applicant has not

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demonstrated that it will be infeasible to acquire an additional right to enlarge the tidal connection currently being proffered by the applicant as a vehicle for restoration.

Given that the applicant's study was based on a project that would include a golf course in the middle of the restoration area, the Commission also finds that the adequacy and use of the existing culvert is constrained because (1) the proposed golf course design, which the applicant contends is not feasible to change, results in the Phase 2 and Phase 3 potential future wetland creation areas being located further from the culvert, forcing the water to travel a longer distance, and (2) further, the connection between Phase 2 and Phase 3 is constricted by the proposed golf course design, creating a bottle-neck which restricts water flow.

The existing degraded wetlands have a tidal range of about 1 foot and a residence time of 4 days. The proposed wetlands, if future build-out of Phase 2 and Phase 3 occurs, are predicted to have a 1 foot tidal range, and the residence time would be reduced to 2.8 days. The applicant's concept wetlands plan (page 17) indicates that residence times of less than 7 days are considered acceptable. Therefore, at full build-out with Phase 2 and Phase 3, the Commission also finds that the proposed wetlands would be of higher quality than the existing wetlands, because residence times will be reduced and within the time considered acceptable. Further, tidal range will not be reduced. Therefore, if the golf course were completely eliminated or reduced in size to delete the bottle-necks, a larger wetland restoration project than proposed, of similar quality, could be built using the existing culvert.

As a point of reference, the existing Bolsa Chica Ecological Reserve, a wetland managed by the California Department of Fish and Game considered to be of great importance, has only a slightly larger tidal range of 1.5 feet, and a much longer residence times of over 20 days, according to the National Marine Fisheries Service. The extremely long residence time is due to the fact that: (1) the closest point of the existing reserve to the ocean is well over a mile away because water has to travel from the reserve through Huntington Harbour, Sunset Aquatic Park, and the mouth of Anaheim Bay before it reaches the ocean, and (1) the existing ecological reserve is long and narrow, so water within once it enters the existing reserve still has a far way to travel to the furthest point in the existing reserve. Nevertheless, the existing Bolsa Chica ecological reserve functions well and is considered to be an important wetland. In terms of tidal range and residence times, the proposed wetlands would be of comparable quality to the important, existing Bolsa Chica wetlands.

In addition, at low tides, the amount of submerged land at the existing Bolsa Chica wetlands is greatly reduced, leaving a lot of exposed intertidal habitat. Further, by way of comparison, the proposed Bolsa Chica wetland restoration project adjacent to the existing Bolsa Chica ecological reserve, which is a large scale full tidal restoration effort intended to create a major wetland with significant habitat values with a direct ocean entrance, is expected to have residence times up to 5 days, with an average residence time of three days. Therefore, a larger, shallower wetland, consisting of less subtidal and more intertidal habitat that is not submerged at all times, with possibly longer residence times, than proposed could also be created at the subject site. As stated above, wetlands come in many different shapes, sizes, habitat types, and configurations.

Therefore, compared to both the existing Bolsa Chica Ecological Reserve and the proposed Bolsa Chica wetlands restoration effort underway, the ultimate wetland area proposed by the applicant (including Phase 2 and Phase 3) would still have acceptable residence times and tidal range. Further, without the constraints imposed by the proposed golf course design, the proposed wetlands could be:

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1) redesigned to further increase tidal range and decrease residence times, or 2) enlarged (e.g., by shrinking the golf course to nine holes) to create additional acreage with a different mix of habitat types and with possibly longer residence times that are nevertheless consistent with existing or proposed wetlands that are considered to be important and valuable.

(iii) **Restoration by the Port of Long Beach**

The Port of Long Beach ("Port") conducted a preliminary study to determine whether it would be feasible for the Port to create a wetland on the subject site that could be used as mitigation for fill of coastal water for Port expansion. As a trade-off for prohibiting the construction of brand new ports in the coastal zone which would potentially cause significant adverse impacts to coastal resources, the Coastal Act allows for the expansion of existing ports in California's coastal zone if the expansions are consistent with the Coastal Act's provisions regarding ports. The Coastal Act thus allows for ports to fill coastal waters if, among other things, the fill is mitigated. As the Port has expanded, it has created wetland mitigation sites, including the restoration of Batiquitos Lagoon in San Diego County. The Port previously undertook a preliminary study of the subject site for mitigation in conjunction with the previous Mola project in 1989. The 1989 planning effort ended prematurely and did not go beyond the exploratory stage.

As stated above, wetlands come in a variety of sizes, shapes, habitat types, designs and configurations. Mitigation project for ports usually take on a particular design that involves the creation of a large proportion of subtidal and mudflat habitat suitable for fish. This is because the coastal waters typically filled by ports are deepwater fish habitat which is always submerged. Further, this type of habitat is the type for which the resources agencies like the National Marine Fisheries Service, which also oversee fill of coastal waters, usually give mitigation credits. These types of wetlands generally require significant excavation and a tidal connection to marine waters of relatively high quality. For the proposed Port restoration options, several 8-foot diameter connections to the San Gabriel River were assumed which would provide a full (-2.59 to +7.96 foot Mean Lower Low Water) or a slightly muted (-0.1 to +6.5 foot MLLW) tidal range. Therefore, the feasibility of port mitigation projects are constrained by the specific type of habitat they try and maximize.

In the proposed restoration plan, the existing 4-foot culvert connecting to the San Gabriel River is used and the size (23.8 acres without transition/buffer zones) and shape of the restoration area is dictated by the golf course design. The layout chosen is tidal basin and the habitat mix includes about 40% subtidal habitat and 40% infrequently wetted high marsh. The remainder is mudflat and low marsh. Given this design, the hydrological model predicts an average tidal range of about 1.5 feet from a low of +3.4 feet relative to Mean Lower Low Water ("MLLW") to a high of +4.9 MLLW, and a worst-case residence time of tidal waters of 1.3 days (which is very good). If oil production land was added in the future, the tidally influenced area could be increased to 37.4 acres. However, the average tidal range would drop to about 1 foot and the residence time would increase to about 3 days (still good). Without the golf course, 83 acres of subtidal and tidal wetland could be constructed with 40% subtidal and low intertidal fish habitat and 60% salt marsh laid out in a basin design.

Unfortunately, a feasibility study free of development or mitigation constraints has never been done for the subject site. The 1982 Coastal Conservancy Project, the 1989-90 Mola project, the applicant's proposed project, and the Port all looked to design wetlands that would accommodate proposed development or maximize mitigation credits. However, the greatest increase in habitat value per dollar spent might be quite different than the alternatives that have been examined by the current and previous applicants and the Port of Long Beach. For example, fish habitat is relatively expensive because it requires substantial excavation and good water quality. A possible alternative is a large restoration which maximized middle and high salt marsh and which is based on a series of radiating channels rather than on a tidal basin. Less excavation would be required and the plants, algae,

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and invertebrates in those habitats are tolerant of poor water quality than are fish. Such a restoration would provide habitat for many birds including the endangered Belding's Savannah Sparrow. Without the constraint of the golf course but with the existing tidal connection, this design would probably enable a larger restoration than that currently proposed, but a useful estimate of the actual area would require a formal hydrological analysis (communication with Moffatt & Nichol Engineers to staff).

The current Port studies have come to a standstill. Based on the studies done to date, the Port has concluded that the mitigation projects identified thus far for the subject site are too costly for them to pursue. The Port has, however, identified four modifications to the projects identified thus far which would reduce the cost level to a low enough level that the Port would consider undertaking as feasible. (see Exhibit 3) These are: 1) that the land owner agree to on-site disposal to reduce the high cost of transporting excavated material off-site, 2) the land owner dedicates, rather than sells, the land, 3) The endowment fund is as small as possible consistent with adequate long-term maintenance, and 4) field studies in the San Gabriel River (regarding water quality), which have not yet been undertaken by the Port, produce results which justify raising the port mitigation credit ratio from 0.9:1 to 1:1. Therefore, the Commission finds that a Port mitigation wetland restoration on the subject site cannot be ruled out because: 1) the full feasibility analysis has not been done, and 2) there is still the potential for the National Marine Fisheries Service and U.S. Fish and Wildlife Service to give the mitigation credits to the Port.

(v) **Conclusion (Larger Wetland Restoration)**

In terms of potential restorers of the site to wetlands, the only organized parties that have undertaken serious studies currently are the applicant and the Port. However, grass-roots parties have expressed interest in attempting to come up with alternative wetland restoration plans, and possibly tying such a plan into the restoration of the adjacent Los Cerritos wetlands to create a substantial regional wetlands complex that begins to bring back the functions and values of the historic Alamitos Bay wetlands. Further, the avenues of undertaking a wetland restoration project on the subject site via the Coastal Conservancy or Southern California Wetlands Clearinghouse have not been fully explored. It may also be possible that federal funds for resource enhancement are available. Further, as the U.S. Army Corps has explored the removal of dams it has built to restore rivers to more natural states, so too could the potential arise for the Corps to remove some of the levees it has built on rivers like the San Gabriel River to restore wetlands.

Finally, there are few potential mitigation sites left in the Southern California coastal zone for the Port to use for meaningful, substantial mitigation to accommodate fill for its planned expansions. As the scarcity of these sites increases, the constraints such as costs coupled with potential advances in technology will become less of a barrier to the Port. Their need for additional mitigation credits in the future is inevitable to the extent they need to fill coastal waters to continue to expand and grow. Therefore, the Commission finds that the proposed golf course must be denied because there is room for wetland restoration that is not port-related and a port-related mitigation project is not yet ruled out.

(B) ***FEIR Alternatives Considered Feasible but Not Selected***

The Final Environmental Impact Report ("FEIR") evaluated the following five alternatives to the proposed project after dismissing several others: (see Exhibit 11 of this staff report for Volume I, Section 7.0 which contains maps of Alternatives 1, 2, and 3)

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- 1) Development of 86 acres of wetlands for a wetland mitigation bank, construction of 250 residential units in both single-family and multi-family configurations mostly on the mesa and the immediately adjacent lowlands, a 16,100 square foot visitor/recreational commercial center on the State Lands Parcel and a 3,900 square foot interpretive center, and mineral-production on 46.6 acres,
- 2) A 65.6 acre 9-hole golf course, 150 single-family and multi-family residential units, a 16,100 square foot visitor/recreational commercial center, 43 acres of wetlands, and mineral production on 47.2 acres,
- 3) A 96.5 acre 18-hole golf course, 150 single-family residential units, a 16,100 square foot visitor/recreational commercial center, and off-site wetlands,
- 4) A no project alternative, and
- 5) Development consistent with existing City land use designations,

The FEIR (Volume I, Page 3.2) states that the proposed project is based on the following underlying principle:

To create a project that will balance the land use, environmental benefits and ownership economics of the property, while meeting or exceeding all applicable federal, state and local plans and regulations.

The alternatives were evaluated based on the project's goals and the City's objectives as stated in Section 3.0, Volume I of the FEIR. These goals and objectives are also echoed in Exhibit B (starting on Page 14) of the City of Seal Beach City Council's Resolution 4562 approval certifying the FEIR (see Exhibit 11 of this staff report) The project's goals are:

- ◆ *Maintain significant acreage for restoration/creation of wetlands and plan for long-term retention of viable wildlife habitat and biological diversity on the site.*
- ◆ *Create/restore a wetlands ecosystem that provides a meaningful contribution to the regional system of coastal wetlands and open space along the Pacific [Flyway].*
- ◆ *Protect and improve water quality of the wetlands by redirecting existing urban runoff and utilizing the golf course as a filtration system, detention area and buffer between the wetlands and the urban environment.*
- ◆ *Respect the property's physical constraints.*
- ◆ *Preserve and enhance the open space and create public access opportunities.*
- ◆ *Provide visitor-serving recreational opportunities within the coastal zone that will contribute to the economic base of the City of Seal Beach.*
- ◆ *Create an effective system of open space, trails, and parks.*
- ◆ *Reduce the acreage designated for residential use and reduce the number of units as currently designated in the City's existing Specific Plan.*
- ◆ *Provide for comprehensive planning of the Hellman Ranch and surrounding properties to ensure land use compatibility.*
- ◆ *Develop a plan that is responsive to community priorities and concerns, consistent with the California Coastal Act and that can be supported by local, state and federal regulatory agencies.*

Volume I, Section 3.0 of the FEIR also lists the following objectives the City wished to achieve through the project:

- ◆ *Wetland Restoration*
- ◆ *Preservation of Gum Grove Nature Park and dedication to the City*
- ◆ *Preservation of cultural resource sites, to the extent feasible*

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- ◆ *Preservation of open space, to the extent feasible*
- ◆ *Minimal traffic and air quality impacts*
- ◆ *Development of visitor-serving commercial and recreation facilities*

The five alternatives to the proposed project were evaluated by the FEIR based on how well the alternatives met these goals and objectives. It should be noted that some of the goals (for example; visitor-serving uses that contribute to the City's economic base, or focusing on community priorities and concerns), while valid, are not necessarily required to find a proposed coastal development permit consistent with the goals and policies of the Coastal Act.

(i) **FEIR Alternative 1 (Mitigation Bank, etc.)**

Alternative 1 is comprised of both an 86 acre wetland mitigation bank and 250 residential units clustered mostly on the mesa and immediately adjacent lowlands. In certifying the FEIR, the City rejected this alternative because it would meet most, but not all, project goals and objectives, and the City believed the benefits were outweighed by several factors. For instance, Alternative 1 would not meet the goal of reducing residential density, it would require approximately three times the amount of services utilities and natural resources to construct and operate compared to the proposed project, and it would preclude development of the golf course.

The technological infeasibility of constructing the 86 acre Alternative 1 mitigation bank, including the issues of tidal connection, tidal range and residence times, is not discussed in the FEIR or City's resolution of approval nor listed as one of the reasons the City rejected this alternative in its resolution certifying the FEIR.

However, in its resolution of approval, the City acknowledges that "[t]his alternative would provide for the greatest amount of land to be left in its existing condition and would have the potential to restore the largest acreage of saltwater marsh wetlands (Page 62 of Exhibit 11 of this staff report; City Resolution 4562). Further, the FEIR concluded that Alternative 1 provides "... greater opportunities for area residents to enjoy the benefits of these wetlands would be created by this Alternative than by the proposed project." (Volume I, Page 7-16) Further, specifically regarding Biological Resources, Page 7-17 of Volume I of the FEIR states that:

Assuming successful wetland restoration, this Alternative provides the largest increase in saltwater marsh restoration, which is anticipated to provide improved habitat for the Belding's savannah sparrow and potential foraging habitat for the California least tern. The overall benefits to wildlife habitat under this Alternative are considered superior to the proposed project.

The FEIR did not state whether any wetlands would be filled for non-allowable uses under Alternative 1. The map of Alternative 1 appears to show that the non-wetland development (i.e., the 250 homes), would be clustered away from the existing on-site wetlands. Given that a primary goal of Alternative 1 is a mitigation bank, and that the residential configuration can feasibly be clustered away from the existing wetland area, the Commission finds it is feasible for Alternative 1 to avoid wetland fill for residential purposes.

In addition, the Commission also finds that the Mitigation Bank proposed under Alternative 1 is also feasible because the lowland areas at the Hellman Ranch site that historically were wetlands are feasibly restorable as explained above.

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Finally, the FEIR indicated that, under Alternative 1, “[s]ince no golf course would be constructed to serve as a filter for runoff water, the wetlands to be constructed may receive urban runoff, adversely impacting these wetlands.” (Volume I, Page 7-23) However, the Commission finds that it is feasible for the wetland mitigation area proposed under Alternative 1 to include a berm constructed around it, similar to the berm around the salt marsh proposed by the applicant, to prevent runoff from entering the wetlands. Also, unlike the proposed golf course, Alternative 1 would not contribute additional pollutants in the form of pesticides which the runoff flowing over the golf course would collect.

Therefore, the Commission finds that, for all of the reasons discussed above, and in view of the fact that the proposed golf course design would no longer be a design constraint, it is feasible to provide a suitable tidal connection under Alternative 1 to create a quality wetland restoration mitigation site.

The FEIR identifies other non-wetland adverse impacts which would result from Alternative 1, including traffic and attendant air quality impacts, noise impacts, archaeological impacts, seismic impacts, and increased burdens on services. The FEIR indicates that noise impacts would be significant and unavoidable, similar however to the proposed project. Likewise, while the homes in the lowlands under Alternative 2 would subject to potential seismic hazards, so would the proposed golf clubhouse; mitigation measures similar in nature to those required for the proposed golf clubhouse would similarly be feasible for homes. Archaeological impacts would be similar to the proposed project and can be mitigated, as evidenced by the conditions of approval of this permit.

The homes would be close to mineral production facilities; however, the FEIR simply states that additional setbacks and safety protection measures would be required and does not state that it would be infeasible to do so or result in significant adverse effects. The FEIR indicates that traffic would increase under Alternative 1 more than it would under the proposed project. However, while the City rejected Alternative 1 in part based on increased traffic, neither the FEIR nor the City’s certification resolution makes clear if these increases would result in significant adverse effects, or whether the impacts can be mitigated below a level of significance.

Further, from a Coastal Act standpoint, the area of the homes is located well inland from the beach and the primary visitor-serving areas of the City, a little closer to the inland edge of the coastal zone boundary than to the shoreline. Higher density may increase the potential for use of public transportation (a bus stop exists near the entrance to the homes), and the homes are located next to an arterial road. Thus, public access impacts would likely not differ between the 70 homes of the proposed project and the 250 homes of Alternative 1.

The air pollution increases attendant with the increased traffic of Alternative 1 would also be significant, according to the FEIR. However, because the site is in a non-attainment area, the FEIR indicates that any additional contribution of new emissions to the region would be considered significant. Therefore, any project involving increases in emission would have air quality impacts - only the “No Project” alternative would avoid air quality impacts.

Finally, the FEIR concluded that Alternative 1’s dedication of Gum Grove Park would result in less than significant impacts to recreation. The FEIR also concluded that the Population/Housing impacts of Alternative 1 would be less than significant.

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Therefore, the Commission finds that Alternative 1 is a less environmentally damaging feasible alternative. Therefore, the Commission finds that even if the proposed golf course fill could be considered an allowable use under Section 30233 of the Coastal Act, the proposed project is not the least environmentally damaging alternative consistent with the other provisions of Section 30233. Therefore, the Commission attaches Special Condition No. 1 which eliminates the portion of the project involving the fill of wetlands for a golf course.

In many ways, the proposed project as conditioned by the Commission is a modified version of Alternative 1, in that; (1) it eliminates development in the lowland to allow for the potential of large wetland restoration area in the lowlands, (2) approves homes on the mesa, and (3) approves a visitor-serving development on the State Lands Parcel. Further, the proposed project as conditioned by the Commission would be less environmentally damaging than Alternative 1 because: (1) it would result in far fewer homes being built, which reduces the adverse traffic impacts of Alternative 1, and (2) does not include structural development in liquefiable or flood-prone areas of the lowlands, reducing the seismic and flooding hazard potential.

(ii) **FEIR Alternative 2 (Nine-hole golf course, etc.)**

Alternative 2 was not selected because it meets most but not all project goals and City objectives. It was not rejected on the basis that it was technically infeasible to build an adequate tidal connection for the 43 acre wetland described in this alternative. Based on the FEIR map for Alternative 2, there appears to be fill of existing wetlands for the specific 9-hole golf course, but the exact amount is unclear from the map of Alternative 2. No detailed analysis of wetland fill was provided. Therefore, the Commission finds that Alternative 2, as specifically described in the FEIR, is not a less environmentally damaging alternative.

However, the Commission also finds that other 9-hole golf course design options were not fully explored in Alternative 2. There might be a way to design a playable 9-hole golf course which does not result in any fill of on-site wetlands and provides a one hundred foot buffer surrounding the existing wetlands. Thus, it may be possible to modify Alternative 2 in a manner so that it is a less environmentally damaging alternative.

(iii) **FEIR Alternative 3 (Off-Site Wetland Mitigation)**

Alternative 3 was not selected because it met only some, not even most, of the project objectives. Also, since Alternative 3 would result in all existing wetlands being filled for a golf course and no on-site wetlands creation, this alternative does not constitute a feasible less environmentally damaging alternative. Therefore, the Commission finds that Alternative 3 is not a less environmentally damaging alternative.

(iv) **“No Project” FEIR Alternative**

The fourth alternative considered feasible by the FEIR, the “No Project” alternative, was not selected because it would not be able to meet the project goals. The FEIR concludes that “[t]he overall benefits to wildlife habitat from the proposed project are considered superior to the No Project Alternative.” However, the FEIR also acknowledges that “[u]nder the No Project Alternative, existing biological resources would remain undisturbed.” Further, the FEIR also acknowledges that “[i]mplementation of the No Project Alternative would not have a significant effect on the environment.”

Deleting the proposed golf course would not result in the existing degraded and severely degraded wetlands from being restored. While leaving the wetlands in their existing state may, as indicated in the March 19, 1998 staff report for this permit, not be an environmentally preferable alternative vis-à-vis restoring wetlands values,

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neither will the “No Project” alternative result in any wetland fill. Even degraded and severely degraded wetlands have some function. As the 1989 staff report for the MOLA project indicates as described above, the two acre existing tidal channel is productive and winter rains increase the productivity of the non-tidal wetlands.

Finally, any alternative which proposes no development whatsoever in the 100+ acre lowlands area would leave open the possibility of an entity, such as the Port of Long Beach, which needs wetland mitigation sites to acquire part or all of the lowlands for off-site mitigation for wetland impacts on other sites. During the 1989 MOLA project, the Port of Long Beach explored the idea of using the subject site for mitigation for its future harbor fill projects. However, since there was no interest on the part of the MOLA group and the City at that time, the Port of Long Beach interest never went beyond the exploratory stage.

The “No Project” alternative would not result in any wetland fill and preserve the possibility of wetland restoration on a larger portion of the subject site than proposed. Therefore, the Commission finds that the “No Project” alternative is a less environmentally damaging feasible alternative.

(v) Development Consistent with Existing Land Use Designations

The fifth FEIR alternative involves constructing development consistent with the existing City land use designations. In effect, this means building development similar to the MOLA project approved by the Commission in 1990. However, this alternative involves structural development across a major fault zone which crosses the middle of the subject site. Pursuant to the Alquist-Priolo Act provisions, habitable human development cannot occur near the earthquake fault. Thus, this alternative, or any other project which involves structural development for human occupation across or near the earthquake fault, is not feasible. Therefore, the Commission finds that this alternative is not a less environmentally damaging feasible alternative.

(vi) Conclusion (FEIR Feasible Alternatives)

Thus, Alternative 1 (i.e., the wetland mitigation bank plus 250 houses) and the “No Project” Alternative identified in the FEIR are feasible alternatives that would result in less environmental damage than the proposed project. The Commission further finds that, without the design constraints posed by the golf course, it is feasible to provide a suitable tidal connection under Alternative 1. As stated above, the Commission also finds that the applicant has not demonstrated that it would be infeasible to enlarge the tidal connection currently relied upon by the applicant to achieve the proposed restoration. Therefore, the Commission finds that even if the proposed golf course fill could be considered an allowable use under Section 30233 of the Coastal Act, the proposed project is not the least environmentally damaging alternative consistent with the other provisions of Section 30233. Therefore, the Commission attaches Special Condition No. 1 which eliminates the portion of the project involving the fill of wetlands for a golf course.

As stated above, in many ways, the project as conditioned by the Commission is a modified version of Alternative 1, in that; (1) it eliminates development in the lowland to allow for the potential of large wetland restoration area in the lowlands, (2) approves the 70 homes on the mesa, rather than 250, and (3) approves a visitor-serving development on the State Lands Parcel. The Commission notes that without the golf course fill, the wetland mitigation will no longer be required. Therefore, the Commission finds that under the approved alternative, the applicant is left in a more economically viable position because the revenue from the residential component will no longer be needed to fund wetland mitigation.

(C) *Development in General Which Avoids Wetland*

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In general terms, development, whether a golf course, houses, or other uses, could be proposed in the lowlands so as to avoid the existing wetlands by siting development on non-wetland areas. Since the existing wetlands on-site are scattered and fragmented, it may not be feasible to develop the site in a manner that intersperses development between the wetlands fragments. In other words, any development proposal which avoids filling any of the wetlands for non-restoration purposes would likely have to avoid some of the surrounding adjacent non-wetland areas as well, preserving the ability to connect the fragmented wetlands into a better functioning wetlands with adequate wetland buffers.

As stated above, the applicant has confirmed that there is no existing subdivision of the Hellman Ranch property. (Exhibit 1, pages 35-39) In addition, this parcel is currently utilized for mineral production, of which Hellman Properties owns the entire operating interest. (Exhibit 1, pages 35-39) Further, although Shell Oil (now Signal Hill Petroleum) has a 50% producing interest in APN 980-36-605, Signal Hill Petroleum has no land rights. (Exhibit 1, pages 35-39)

The applicant is requesting approval of a subdivision of one 196.6 acre parcel in a configuration that would separate the existing mineral production areas from the proposed golf course, wetland and residential areas.

The Commission finds it necessary to approve a revised land division configuration that maintains in single parcel ownership and usage the land areas proposed for the golf course and wetland restoration as well as the area currently used for oil production which provides an economically viable use of the property. This means that should the owner of the separate lowlands parcel the Commission would be approving (assuming the permit is accepted and all other steps necessary to create the new subdivision and parcel are taken) at some time in the future come forward with a new development proposal in the lowlands portion of the project site now before the Commission, that owner would already have an economically viable use of the property (assuming mineral production is ongoing).

At such a point as mineral production ceases and development is proposed within the lowland area, the Commission finds it may be appropriate to impose a deed restriction over the lowland area to ensure the lowlands are developed consistent with Sections 30233 and 30240 of the Coastal Act. However, alternative uses consistent with Coastal Act policies could be considered on the mineral production parcel which might augment its economic use. Only by keeping the mineral production sites combined with the remainder of the lowlands area as one parcel can the Commission allow the subdivision of the remainder of the project site and ensure that future development proposals will not compel the Commission to allow uses in the lowlands solely to avoid a takings claim.

The Commission therefore attaches Special Condition 2 for revision of the proposed Tentative Tract Map 15381. Only as conditioned, can the Commission find the proposed project consistent with the Coastal Act.

(3) Adequacy of Wetland Mitigation Measures

After requiring that the proposed project be the least environmentally damaging feasible alternative, Section 30233(a) also requires the provision of feasible mitigation measures to minimize adverse environmental effects of fill. Besides not being an allowable use in wetlands, or the least environmentally damaging alternative, the

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proposed golf course would have significant adverse environmental effects on the adjacent wetlands proposed to be created.

(A) Pesticides

The Commission finds that use of pesticides for the proposed golf course would have significant adverse environmental effects on the proposed wetlands. While the applicant has developed a general plan for developing and managing the proposed golf course in an environmentally friendly way, no detailed, final pesticide management program has been prepared which includes a list of prohibited chemicals and assures that permitted chemicals would biodegrade quickly and not have adverse impacts on wildlife, thus mitigating impacts from pesticide use on wildlife using the wetlands.

Nor have detailed methods for pesticide use been developed. The City requires spraying of chemicals to be directed away from Gum Grove Park to eliminate possible adverse effects on the Monarch Butterfly. However, no prohibition on spraying is proposed around the wetlands. Airborne particles of pesticides could land in the wetlands and contaminate the water and plant life. Also, while proposed berms surrounding the wetlands prevent runoff from flowing into the proposed wetlands, would not adequately prevent pesticides placed directly on the ground from leaching through the berms into the wetlands. Without an impermeable barrier to prevent this type of chemical leaching, adverse impacts will occur to the proposed wetlands. The applicant has not demonstrated how the proposed berms would prevent leaching of pesticides into the wetlands.

(B) Remediation of Mineral Production Sites

In addition, the Commission finds that remediation of the mineral production areas proposed by the applicant for potential future wetland restoration may preclude the ability to use those sites for wetland restoration. The proposed golf course layout also forces the future expansion of the wetlands on the mineral production areas away from the tidal inlet which is the source of the water. As discussed above, no detailed, final remediation plan, including costs and the extent of contamination has been prepared. Without a detailed final remediation plan, including the extent of the contamination, the Commission cannot determine whether construction of wetlands on the mineral production areas would be safe for wetland plants and wildlife. It is likely that the mineral production areas contain soils contaminated with substances toxic to wetland plant and wildlife. If this is the case, it may be cost-prohibitive to create wetlands on the mineral production sites in the future. If wetlands cannot be built on the mineral production site in the future, this defeats the purpose of using the mineral production areas for potential future wetland creation as mitigation for filling of existing on-site wetlands.

Until such time as a specific plan is prepared, the Commission finds that it is purely speculative whether any such potential future wetland restoration will occur on the mineral production areas.

(C) Monitoring

Further, the Commission finds that the proposed monitoring period of five years is not adequate. Because wetlands restoration projects are not always successful, and the proposed project would result in all existing wetlands being filled, it is necessary to ensure that any proposed created wetland become successfully established and fully functional. As described above, the track record of past wetland creation projects indicates a less than optimum success rate. The success rate of wetlands restoration is less than 100%. A created wetland that never establishes itself cannot be considered wetlands restoration. If an existing wetland, even though it may be degraded, is filled and therefore permanently lost and its replacement wetland never establishes, then there is a

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net loss of wetlands. The time between the filling of an existing wetland and the point at which the compensatory created wetland becomes successfully established and fully functional results in a temporal loss of wetlands functions. Thus, stringent monitoring is needed to guarantee that the created wetlands become fully functional in order to truly mitigate for the loss of existing wetlands due to fill.

(D) Buffers

The Commission finds that the proposed golf design does not provide an adequate buffer between the human activity on the golf course and the proposed wetlands, leading to potential harassment (i.e., disturbance due to proximity to human activity, not deliberate malicious human acts directed at the wildlife) of the wetland wildlife by human activity. In order for the proposed wetlands to serve as compensatory mitigation for fill of the existing wetlands due to the golf course, the proposed wetlands must have high values that cannot be compromised due to wildlife harassment.

Further, the proposed golf course would eliminate a significant amount of non-native grasslands. The environmental impact report ("EIR") for the proposed project indicates that there are 137 acres of ruderal grasslands on the subject site, 48.7 acres of which would be eliminated by the proposed golf course. Most of the grasslands are non-native species. However, the California Department of Fish and Game ("CDFG") in their May 21, 1997 letter to the City commenting on the EIR indicates that the grasslands nevertheless contain value as foraging area for a variety of species, such as the Western Burrowing Owl, listed as California Species of Special Concern. The U.S. Fish and Wildlife also concurs with this. (see Exhibit ?) Further, a burrowing owl was observed on the site in December of 1996 and January of 1997. In addition, the CDFG expressed reservations about the suitability of the types of habitat for the owl which would be provided in the proposed wetlands. The CDFG also recommends avoidance or enhancement of open space areas.

The applicant is proposing that some of the mineral production areas would be suitable for replacement owl habitat. However, the FEIR did not evaluate the potential for contaminants in the soil of the mineral production areas would result in adverse effects on the owls. In addition, the burrowing owl guidelines referred to by the CDFG state that owl impacts include disturbance or harassment within 160 feet of occupied burrows. The proposed artificial burrows to be created for replacement habitat would likely be within 160 feet of either mineral production facilities or, if in the wetland restoration area, the golf course. In addition, while the proposed golf course would also provide a great amount of grass area in the form of fairways, tees, and greens, these grass areas would not be suitable for foraging because of pesticide use associated with maintenance of the grass areas and because of human activity which will occur on the golf course.

The cumulative loss of open space grasslands in Southern California is also a significant adverse impact. Part of the value of the subject site's grasslands, like wetlands, is that their value increases with scarcity. The applicant contends that adequate open space area is still available at the nearby U.S. Naval Weapons Station. However, while the Weapons Station is located directly across Seal Beach Boulevard from the mesa area of the subject site and contains a significant amount of open area, the grassland areas of the Weapons Station is separated from the subject site by development on the Weapons Station, as well as by Seal Beach Boulevard, a major arterial. Further, the Weapons Station has been considered for closure. There is no guarantee that reuse of the Weapons Station for civilian use would preserve the grasslands. Since the applicant contends that the proposed golf course layout cannot be changed, there are no feasible measures to mitigate for significant adverse impacts resulting from errant golf balls harassing wildlife and loss of non-native grasslands used for foraging habitat.

(E) Increase in Habitat Values as Mitigation

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The applicant also argues that mitigation credit should also be given for increases in habitat values, in addition to mitigation credit for increased acreage. The additional mitigation credit for increased habitat values which the applicant is seeking would result from: 1) cleaning out the culvert providing the tidal connection for the existing and proposed wetlands, and 2) a projected increase in wetland functions. The Commission finds that these do not qualify as mitigation for wetland fill.

First, the applicant argues that the increased habitat values would result in part due to cleaning out the culvert to remove sediment and other materials which now partially obstruct water flow in the culvert. This culvert connects the existing and proposed wetlands to the San Gabriel River and is the only existing source of tidal water. Therefore, it is important to maintain the flow in the culvert. The applicant compares their proposed culvert cleaning with the requirements of Southern California Edison ("SCE") at San Dieguito Lagoon in San Diego County (not to be confused with the port mitigation project at Batiquitos Lagoon, also in San Diego County). The applicant contends that because the Commission gave mitigation credit to SCE for enhancing the tidal connection at San Dieguito, the Commission should also give the applicant credit for tidal enhancement. However, the applicant's proposal is not comparable to SCE's undertaking. In the case of SCE, the permittees will be only dredging the channel to keep open the non-degraded San Dieguito lagoon which is currently closed off from the ocean. By solely dredging the channels without any other improvements, a much larger area would be subject to tidal influx than currently exists at San Dieguito. This would not be so at Hellman Ranch, because additional restoration work must be done to restore the wetlands beyond simply cleaning out the culvert. At Hellman Ranch, keeping the culvert open and free of debris by itself will not result in any significant increase in wetlands. Therefore, Hellman Ranch and SCE are not comparable in this regard. Thus, the Commission finds that the applicant shall not receive the type of additional mitigation credit which was granted to SCE.

Second, the applicant has also prepared an assessment of projected increases in functions over the existing degraded and severely degraded wetlands as a result of the proposed wetlands. (see Exhibit 6) The assessment was based on criteria developed by the U.S. Army Corps of Engineers ("Army Corps"). The applicant's assessment concluded that the wetland functions resulting from the proposed wetlands compared to the wetland functions of the existing degraded and severely degraded wetlands on-site would increase by a ratio of 3.6:1, for which the applicant believes credit should be given. However, the Army Corps submitted a statement indicating that they believe the applicant's assessment is flawed. (see Exhibit 4, p. 20) The Army Corps states that the applicant's assessment does not appear to tie into reference data from existing sites, and that variables appear to be chosen on an arbitrary basis. Therefore, the Army Corps is casting doubt on the applicant's project of a 3.6:1 increase in functions. Thus, the Commission finds that the applicant shall not receive mitigation credit for the projected increase in functions.

(F) Conclusion (Mitigation)

Therefore, even if (1) the proposed golf course fill could be considered an allowable use under Section 30233 of the Coastal Act, and (2) the proposed project could be found to be the least environmentally damaging alternative, the proposed project does not provide all feasible mitigation measures to assure that all adverse effects are minimized, consistent with the other applicable provision of Section 30233. Thus, the Commission attaches Special Condition No. 1 which eliminates the portion of the proposed project involving the fill of wetlands for a golf course.

d. Use of Section 30007.5 to Balance Conflicting Chapter 3 Policies

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The applicants urge the Commission to utilize section 30007.5 of the Coastal Act to approve the proposed wetland fill if it finds that the fill proposed for the golf course is not allowable under Sections 30233 or 30411 of the Coastal Act.

The text of section 30007.5 directs that in carrying out the provisions of this division, conflicts be resolved in a manner which on balance is the most protective of significant coastal resources. Thus, even if a conflict can be identified in the matter now before the Commission, given the existing provisions of section 30233, such a conflict would necessarily be resolved in favor of wetland resources. However, whether a conflict exists which must then be balanced must be decided by interpreting the first sentence of section 30007.5 which states that “conflicts may occur between one or more policies of the division.” (emphasis added).

The Commission finds that the phrase “policies of the division” only includes the policies contained within chapter 3, the chapter which contains the standards by which the adequacy of Local Coastal Programs and proposed developments are determined. Support for this finding is found in Chapter 3, Article 1, section 30200 which is entitled “Policies as standards; resolution of policy conflicts.” Section 30200 reads as follows:

- (a) *Consistent with the coastal zone values cited in section 30001 and the basic goals set forth in section 30001.5, and except as may be otherwise specifically provided in this division, the policies of this chapter shall constitute the standards by which the adequacy of local coastal programs, as provided in Chapter 6 (commencing with section 30500), and, the permissibility of proposed development subject to the provisions of this division are determined. All public agencies carrying out or supporting activities outside the coastal zone that could have a direct impact on resources within the coastal zone shall consider the effect of such actions on coastal zone resources in order to assure that these policies are achieved.*
- (b) *Where the commission or any local government in implementing the provisions of this division identifies a conflict between the policies of this chapter, section 30007.5 shall be utilized to resolve the conflict and the resolution of such conflicts shall be supported by appropriate findings setting forth the basis for the resolution of identified policy conflicts.*

(emphasis added.)

Thus, in order to resolve a conflict between policies of the Coastal Act, the Commission must first determine whether a substantial conflict between statutory directives contained in Chapter 3 of the Coastal Act in fact exists. In making this determination, the Commission must examine whether the proposed project itself actually falls within the protection of two or more statutes which could actually conflict. The Commission must also compare the specific wording of the potentially conflicting statutes to determine if the extent of discretion left to the Commission is parallel in each. Confining the use of Section 30007.5 to conflicts whether the development itself is both mandated and prohibited by two statutory provisions, rather than expanding its use to include conflicts between policies which potentially exist even though the development itself is otherwise prescribed helps eliminate broad public interest overrides which are not themselves mandated by the Coastal Act.

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In this case, the Commission finds there is no conflict between two or more Chapter 3 policies that must be resolved pursuant to section 30007.5 of the Coastal Act. That is, there is no specific policy requiring a golf course which would be in conflict with the allowable use prohibitions contained in section 30233. The applicant's urge the Commission to balance Section 30233, a section which expressly prescribes allowable uses against Coastal Act Sections 30411, 30210, 30222, 30230, and 30231.

However, Sections 30230 and 30231 only require marine resources to be maintained, and enhanced and, where feasible, restored. Therefore, while the maintenance and enhancement provisions of Sections 30230 and 30231 are indeed mandatory and could therefore be seen as conflicting with the prohibition against wetland fill, the restoration provisions of Sections 30230 and 30231 are instead urged only if feasible (i.e.; restoration is not an absolute mandate, unlike maintenance and enhancement) and would therefore defer to the mandatory prohibitions against wetland fill.

Regarding conflicts with Section 30411, Section 30411 is not a Chapter 3 policy. Section 30411 is also not a basis for approval and does not mandate that any development occur. Instead, Section 30411 merely authorizes a study by the CDFG. Thus, Section 30411 is not eligible to be balanced against any other Chapter 3 policies.

Regarding conflicts with Sections 30210 and 30222, neither of these public access provisions mandate the proposed development in the Hellman Ranch. In other words, neither of these two provisions conflict with Section 30233 prohibitions on wetland fill because the Hellman proposal does not fall within the protections of these provisions. That is to say that access is not itself a reason to approve development when it is otherwise prohibited. Instead, if development is approved because it is otherwise not prohibited by Chapter 3 policies, the location and amount of new development must maintain and enhance public access and the development shall not interfere with the public's right of access. (See Coastal Act Sections 30211-214; 30252) Under this interpretation, in order for access issues to even come into play, the development itself must not otherwise be prohibited.

In comparison, development in a wetlands area which does not constitute one of the 8 delineated permissible uses is clearly prohibited by Section 30233. Section 30233 then is mandatory in and of itself. Since development itself can be prohibited by the application of Section 30233, it can be argued that a conflict with another Coastal Act Chapter 3 policy would only exist where that Chapter 3 policy mandated the development which Section 30233 prohibited.

Moreover, section 30233 already requires that a project involving fill be the least environmentally damaging alternative. Therefore, in order for the Commission to find that a conflict exists with Section 30233, the Commission must be convinced that there is no other alternative that would avoid a conflict from the outset. Since the Commission has identified a less environmentally damaging alternative than the proposed wetland fill, it is clear that no conflict between applicable Coastal Act policies need be resolved. Therefore, the Commission finds that, in this case, Section 30007.5 may not be utilized to approve the proposed fill of wetlands for a use that is not one of the 8 enumerated uses pursuant to Section 30233.

e. Conclusion (Wetlands)

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Therefore, the Commission finds that the proposed golf course would not be consistent with Section 30233 of the Coastal Act because; 1) the proposed fill of the wetlands is not one of the eight allowable uses, 2) the feasible mitigation measures provided would not minimize significant adverse environmental effects, and 3) there are feasible less environmentally damaging alternative. Thus, the Commission attaches Special Condition No. 1 which eliminates the portion of the proposed project involving a golf course.

2. Archaeological Resources

Section 30244 of the Coastal Act states:

Where development would adversely impact archaeological or paleontological resources as identified by the State Historic Preservation Officer, reasonable mitigation measures shall be required.

The subject site contains eleven State-identified cultural resources sites. Five of the sites would be left untouched in their current location in Gum Grove Park. However, the proposed development would impact the other designated archaeological sites.

The sites have been documented during the course of previous archaeological investigations. However, because of differences in the methodologies of the previous investigations, the precise location of each archaeological site is uncertain. Therefore, the applicant is proposing to undertake an archaeological investigation prior to the commencement of development of the other proposed components (i.e., construction of the wetlands, golf course, and homes) to document the extent of cultural resources on-site.

The applicant has prepared an archaeological research design that attempts to reconcile as best as possible the uncertain locations of the identified cultural resources sites using the best information and methods available. The research design will guide the proposed archaeological investigation. The proposed investigation will consist of excavation of small sections within the areas of the overall development site thought to contain the identified cultural resources sites.

The Commission finds that the following reasonable mitigation measures shall be required. The State Office of Historic Preservation ("SHPO"), the state Native American Heritage Commission ("NAHC"), and the Native American group/person deemed acceptable by NAHC, shall have the opportunity to review and comment on the peer review. To minimize impacts to cultural resources, the archaeological testing program must be done in accordance with the approved research design.

Further, selection of the archaeologist must be in accordance with accepted guidelines endorsed by the OHP. Also, because of the likelihood of Native American remains being found, a Native American monitor must monitor the archaeological activities. The Native American monitor shall be selected by the City in accordance with NAHC guidelines in consultation with the Native American group/person deemed acceptable by the NAHC.

To ensure the least impacts to cultural resources, before any other development besides the archaeological testing can take place, the testing must have first been completed as well as implementation of mitigation measures for impacts to the cultural resources. However, since the locations of many of the cultural resources sites are in dispute and not precisely known, it is possible that the archaeological test program may miss cultural resources that are then discovered during development activities for the golf course and other proposed development. Therefore, the Commission finds that the permit must require that development be temporarily halted until

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appropriate mitigation measures are developed for resources discovered during the course of post-investigation construction activities.

In addition, the Commission finds that all mitigation measures must comply with the requirements of the State Office of Historic Preservation and the Native American Heritage Commission. A qualified Native American monitor shall also be present during construction activities to ensure sensitive treatment of Native American cultural resources. Should human remains be found, the Commission finds that construction shall be temporarily halted and the County Coroner notified to initiate identification proceedings. The Native American group/person shall participate in the identification process. Should the remains be determined to be that of a Native American, the applicant must comply with the provisions of Public Resources Code Section 5097.98. (see Exhibit 13, p.33) However, the Commission notes that PRC Section 5097.98, which governs procedures when human remains of a Native American are found, exempts these procedures from the requirements of the Coastal Act.

Further, by deleting the proposed golf course, as per Special Condition No. 1, the few archaeological sites which are located in the area to be developed with the golf course would be preserved. Therefore, as conditioned, the Commission finds that the proposed project is consistent with Section 30244 of the Coastal Act.

3. Public Access and Recreation

Section 30210 of the Coastal Act states:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30213 of the Coastal Act states:

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.

a. Gum Grove Park Dedication

The applicant proposes to dedicate Gum Grove Park to the City of Seal Beach. The applicant currently leases the land to the City for public park purposes. The park, even though it is leased, is currently signed as being a public park and has been used as such. Therefore, the Commission finds that the applicant must submit written evidence that they have dedicated the park to the City for passive recreation, as proposed, to ensure maximum public recreation, as proposed. Further, to provide maximum public access and recreation opportunities, the Commission finds that the dedication documents must ensure that; 1) new and upgraded trails meet Americans with Disabilities Act requirements to provide access to physically challenged persons, 2) the existing number of parking spaces must be maintained, 3) signage informing the general public of the park's public nature must be maintained, 4) changes in the hours of which adversely affect public access shall be limited to demonstrated public safety concerns and must require an amendment to this permit, and 5) an area fronting on Seal Beach Boulevard, as proposed, is reserved for a public trail and ten public parking spaces which are directly accessible from Seal Beach Boulevard.

b. Trail Linking Gum Grove Park to Seal Beach Boulevard - Public Parking

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Section 30212.5 of the Coastal Act states:

Wherever appropriate and feasible, public facilities, including parking areas or facilities, shall be distributed throughout an area so as to mitigate against the impacts, social and otherwise, of overcrowding or overuse by the public of any single area.

Section 30252 of the Coastal Act states:

The location and amount of new development should maintain and enhance public access to the coast by (1) facilitating the provision or extension of transit service, (2) providing commercial facilities within or adjoining residential development or in other areas that will minimize the use of coastal access roads, (3) providing nonautomobile circulation within the development, (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation, (5) assuring the potential for public transit for high intensity uses such as high-rise office buildings, and by (6) assuring that the recreational needs of new residents will not overload nearby coastal recreation areas by correlating the amount of development with local park acquisition and development plans with the provision of onsite recreational facilities to serve the new development.

The applicant is proposing Tentative Tract Map No. 15402 which would subdivide proposed Lot 2 of Tentative Tract Map No. 15381 into lots for seventy (70) single-family residences, common areas, and private streets. The proposed community would be gated. The proposed subdivision is located at the eastern end of the subject site adjacent to Seal Beach Boulevard, a major thoroughfare which runs to the beach to the south and the freeway to the north. Assuming at least three people occupying each of these 70 proposed homes, the proposed development will result in the increased burden of at least 210 people on existing public recreation facilities.

In addition, as part of the proposed project and subdivision, the applicant is proposing to create Lot 3 of proposed Tentative Tract Map No. 15381 for the purposes of conveying Gum Grove Park to the City of Seal Beach. Proposed Lot 3 has been configured to include a finger that extends from the area generally used as Gum Grove Park eastward to Seal Beach Boulevard. (see Exhibit 1, p. 4) The Commission finds that this finger would provide a second public access entrance to Gum Grove Park. Currently, the only entrance to Gum Grove Park is at the far western end of Gum Grove Park. The current park entrance is tucked away in the existing residential subdivision adjacent to the south side of the subject site. No signs on major public thoroughfares such as Pacific Coast Highway or Seal Beach Boulevard currently point the way to the existing park entrance. This requires people driving or biking down Seal Beach Boulevard to find their way through the existing residential neighborhood clear to the other side of the park. Since Gum Grove Park is a long, linear park, a second public entrance at its eastern end would promote public access to the park. An eastern entrance from Seal Beach Boulevard would also link the park with the public bike lane on the west side of Seal Beach Boulevard, thus encouraging non-automobile trips to the park. Also, a park entrance right on Seal Beach Boulevard, a well-travelled arterial which leads both to the beach to the south and freeway to the north, would be much more visible to the public than the current entrance and thus promote public access.

Therefore, this finger of land within the area proposed for dedication by the applicant shall be reserved for a public access trail and public parking lot directly accessible from Seal Beach Boulevard. Further, the Commission finds that the applicant shall construct the trail and ten public parking spaces within the reserved area. Since parking is prohibited on both sides of Seal Beach Boulevard for at least a half mile in either direction

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of the subject site, the Commission finds that there is a need for public parking to make the trail accessible by the public. The two go hand-in-hand. The Commission finds that the construction of a public trail and ten parking spaces would require a minimal amount of improvement over the mostly flat, relatively narrow strip of land in question. In addition, the ten public parking spaces is similar in number to the 10 spaces required at the State Lands parcel for visitors who are not patronizing proposed commercial visitor-serving uses at that site. Ultimately, if a large-scale wetland restoration is undertaken over much of the lowlands, the public trail from Seal Beach Boulevard could be part of a larger trail that connects this public parking on Seal Beach Boulevard with the proposed parking and visitor-serving uses at the State Lands parcel.

Thus, the Commission attaches Special Condition No. 4 to permit 5-97-367 which requires that the park dedication documents for the proposed dedication of Gum Grove Park provide for the provision of a public trail connecting to Seal Beach Boulevard and the construction of public parking.

If the ten public parking spaces cannot be provided entirely on the dedicated Gum Grove Park area, then the spaces which cannot be built on Lot 3 shall be built on the portion of the area subject to Vesting Tentative Tract Map No. 15402 closest to Lot 3. The Commission finds that even if all ten parking spaces were to be built on the area covered by Vesting Tentative Tract Map No. 15402, they would only occupy a small portion of the residential site. Assuming a parking space dimension of 9'x20', ten spaces at this size would occupy only about 0.04 acres, which is a fraction of the 14.94 acres covered under Vesting Tentative Tract Map No. 15402. Further, the parking spaces would be at the edge of the residential site so as to be adjacent to the proposed Gum Grove Park dedication area. Thus, the small area and location at the edge of the subdivision would be the least intrusive method of providing needed public parking for trail access which cannot be provided on the dedicated Gum Grove Park land itself.

The Commission finds that the public parking spaces must also be directly accessible from Seal Beach Boulevard. The Commission finds that the applicant could redesign the proposed subdivision to relocate the subdivision entrance in a manner which minimizes the need for a long public street in the subdivision (e.g., locate the subdivision entrance adjacent to the dedicated Gum Grove Park area).

Thus, the Commission attached Special Condition No. 5 which provides for signage to inform the public of the need public trail entrance to Gum Grove Park and public parking off of Seal Beach Boulevard, as well as the requirement to provide for public parking directly accessible from Seal Beach Boulevard on the area covered by proposed Vesting Tentative Tract Map No. 15402, in the event not all the public parking can be built on the dedicated Gum Grove Park area.

Finally, the Commission finds that there is no need to require that the proposed subdivision's streets be public or allow public vehicular access over private streets if public parking and a separate vehicular access entrance off of Seal Beach Boulevard to the parking is provided. However, the Commission does not sanction exclusivity in the coastal zone and finds that gates are not allowable in the coastal zone. Therefore, the Commission attaches Special Condition No. 5 which prohibits the installation of gates precluding pedestrian and bicycle access to the subdivision proposed under Vesting Tentative Tract Map No. 15402.

c. *State Lands Parcel*

(1) Visitor Serving Uses

Section 30222 of the Coastal Act states:

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The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.

Section 30213 of the Coastal Act also encourages the provision of lower-cost visitor-serving uses. The applicant is proposing visitor-serving uses and an interpretive center at the parcel of land owned by the California State Lands Commission ("CSLC"). The CSLC is restricted to the types of uses that it can allow on land it owns. Such uses are generally for the public benefit and generally are consistent with the visitor-serving uses required under the Coastal Act.

However, to ensure that the subject site is used for visitor-serving uses as proposed, especially in the event that the CSLC sells the land, the Commission finds that a lease restriction must be recorded, as well as an owner's agreement-to-be-bound to the special conditions of this permit, to notify the applicant and future owners of the limitation on use of the site, including that the site be limited to lower-cost visitor-serving commercial uses and public access and recreation uses consistent with the Chapter 3 policies of the Coastal Act. Further, since the applicant has not proposed detailed plans for the proposed visitor-serving uses, the Commission finds that final plans must be submitted to the Executive Director for review. In addition, office uses (a low-priority use under the Coastal Act) cannot be allowed unless those office uses are adjunct to, and the minimum necessary for the administration of on-site visitor-serving commercial uses (e.g., the manager's office in the non-customer areas of a restaurant).

(2) Parking

Section 30252 of the Coastal Act states, in relevant part:

The location and amount of new development should maintain and enhance public access to the coast by . . . (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation . . .

When a development does not provide adequate on-site parking, users of that development who cannot find an on-site parking space are forced to occupy off-site public parking that could be used by visitors to the coastal zone. A lack of public parking discourages visitors from coming to the beach and other visitor-serving areas, resulting in adverse public access impacts. Thus, all development must provide adequate on-site parking to minimize adverse impacts on public access. The proposed project involves the provision of public access opportunities such as trails and parks. The subject site is a large site that offers the opportunity to spread public parking facilities throughout the area.

As mentioned above, the applicant has not submitted detailed plans for the State Lands parcel, although up to 10,000 square feet of visitor-serving uses are proposed. Therefore, the Commission finds that only the amount of visitor-serving commercial use which can be satisfied by on-site parking shall be allowed. Thus, the Commission finds that, to provide adequate parking and minimize adverse impacts to public access, the visitor-serving uses must provide parking according to the standards in the Hellman Ranch Specific Plan as amended by the City of Seal Beach on August 26, 1997 in conjunction with its approval of the proposed project.

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The conceptual plan indicates approximately sixty-two on-site parking spaces. (see Exhibit 1, p. 9) To ensure that the site provides adequate parking to serve both the future visitor-serving uses, the Commission finds that at least sixty-two parking spaces must be provided on-site to minimize adverse coastal access impacts resulting from the lack of adequate on-site parking.

Also, given the proximity of the site to the heavily used San Gabriel River bike trail and to encourage non-automobile access, the Commission finds that the City requirement for a bike rack shall also be a Commission requirement. Further, a minimum of twenty bicycles shall be accommodated, and the bike rack shall be clearly signed as being available to the general public.

d. Conclusion (Public Access and Recreation)

Therefore, as conditioned, the Commission finds that the proposed project is consistent with the public access and recreation policies of the Coastal Act.

5. Flood Hazards

Section 30253 of the Coastal Act requires development to minimize risks from flood hazard. The subject site is located near a major river and a flood control basin. Most of the structural development will be located on an upland mesa well above flood level. However, to minimize flood hazards, the Commission finds that the City's hydrology mitigation measures must be incorporated by reference as conditions of approval. These measures include conformance to floodplain elevation standards and compliance with requirements for the adjacent flood control basin. Therefore, as conditioned, the Commission finds that the proposed project is consistent with Section 30253 of the Coastal Act.

6. Water Quality

Section 30231 of the Coastal Act states:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

The subject site drains into the San Gabriel River through the proposed salt marsh and the adjacent Los Alamitos Retarding Basin. Polluted runoff generated by development of the site which enters the San Gabriel River would result in adverse impacts to the river's water. Therefore, the Commission finds that National Pollutant Discharge Elimination System ("NPDES") requirements must be met. The Commission finds that approved NPDES permits, Storm Water Pollution Prevention Plans, and Best Management Practices in compliance with California Regional Water Quality Control Board mandates must be submitted and reviewed and approved by the Executive Director. In addition, the Commission finds that runoff from the future residential development shall be directed ultimately into sewage treatment facilities rather than into storm drains which lead into the San Gabriel River or the ocean. Thus, as conditioned, the Commission finds that the proposed development would be consistent with Section 30231 of the Coastal Act.

7. New Development

Section 30250 of the Coastal Act states, in relevant part:

(a) New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources.

The subject site is approximately 196.6 acres in size and is essentially undeveloped except for about 28.2 acres of oil production facilities and small structures housing the property owner's offices. Thus, the subject site is one of a few remaining, non-public park vacant pieces of land along the Southern California coast. The proposed development involves subdivision for 70 homes, an 18 hole golf course and clubhouse, 10,000 square feet of visitor-serving uses, and park uses, wetlands, and public access trails. The proposed development is less dense and intense than previously development proposals for the subject site. In addition, the Commission finds that the golf course must be eliminated, further deintensifying the use. Further, the subject site is completely surrounded by urban development. Infrastructure to serve the proposed development exists in the area. Thus, the proposed development is located within an existing developed area able to accommodate it. Therefore, the Commission finds that the proposed development, as conditioned, is consistent with Section 30250 of the Coastal Act.

8. Other Conditions

Since the applicant has not proposed specific homes in conjunction with the 70 lot residential subdivision, the Commission finds that a separate permit must be required for the homes to allow the Commission to review the proposed homes for consistency with Chapter 3.

D. Development Agreement

The applicant has entered into a development agreement with the City of Seal Beach for the proposed development. California Government Code Section 65869 stipulates that development agreements shall not be applicable to development in the coastal zone unless, prior to certification of the local coastal program ("LCP") for the jurisdiction in which the development is located, the Commission, through formal action, approves the development agreement.

Since the LCP for the City of Seal Beach has not been certified, the Commission will have to approve the development agreement before the agreement can be effective. The development agreement will be acted on by the Commission as a separate hearing item.

E. Local Coastal Program.

Section 30604(a) of the Coastal Act provides that the Commission shall issue a Coastal Development Permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program which conforms with the Chapter Three policies of the Coastal Act.

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On July 28, 1983, the Commission denied the City of Seal Beach Land Use Plan (LUP) as submitted and certified it with suggested modifications. The City did not act on the suggested modifications within six months from the date of Commission action. Therefore, pursuant to Section 13537(b) of the California Code of Regulations, the Commission's certification of the land use plan with suggested modifications expired. The LUP has not been resubmitted for certification since that time.

The proposed development, as conditioned, is consistent with the Chapter Three policies of the Coastal Act. Therefore, the Commission finds that the proposed development would not prejudice the ability of the City to prepare a certified local coastal program consistent with the Chapter Three policies of the Coastal Act.

F. California Environmental Quality Act.

Section 13096 of Title 14 of the California Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

As discussed further herein, development, whether a golf course, houses, or other uses, alternatively could be proposed in the lowlands so as to avoid the existing wetlands by siting development on non-wetland areas. An alternative which proposes no development whatsoever in the 100+ acre lowlands area would leave open the possibility of an entity to acquire all of the lowlands for restoration or off-site mitigation for wetland impacts on other sites.

The proposed development is located in an urban area. All infrastructure necessary to serve the site exist in the area. The proposed project has been conditioned in order to be found consistent with the wetlands, public access, ESHA, natural hazards, water quality, and archaeology policies of Chapter Three of the Coastal Act. The required mitigation measures, particularly elimination of the proposed golf course and reconfiguration of the proposed subdivision, will minimize all significant adverse effects which the activity will have on the environment.

As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned, can be found consistent with the requirements of the Coastal Act to conform to CEQA.

APPENDIX A: Previously Recommended Special Conditions of Approval (from the March 19, 1998 staff report and addendum for the April 7, 1998 Coastal Commission hearing)

WETLANDS RESTORATION AREA / CONSERVATION. (Former Special Condition No. 1)

The wetlands restoration area shall consist of a minimum 59 acres of wetlands (excluding buffers) comprised of: 1) a minimum thirty-six (36) acre salt marsh wetland (Phase 1 of the overall salt marsh wetland creation) to be created initially, located adjacent to the Haynes Cooling Channel and connected to the San Gabriel River by a culvert (as generally depicted on Page 1 of Exhibit B of the March 19, 1998 staff report as revised by the first April 7, 1998 addendum), and surrounded by a buffer area consistent with the transition zone/densely vegetated berms (minimum five feet high above the adjacent golf course grade)/upland areas described in the conceptual wetlands restoration plan (the 36 acre figure shall only include shallow subtidal, occasionally exposed-subtidal, lower intertidal, upper intertidal, and super tidal habitats and shall not include transition areas), 2) a minimum 6.8 acres of freshwater marsh wetlands consisting of five (5) interconnected ponds integrated within the golf course, and 3) reservation of a minimum 16.2 acres of oil mineral production area for future Phase 2 and Phase 3 creation of salt marsh wetlands. The wetlands shall be created, preserved, and maintained as described in the following conditions:

A. "Phase 1" Initial Proposed Salt Marsh Wetland Restoration Area. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall execute and record a document in a form and content acceptable to the Executive Director, irrevocably offering to dedicate to a public agency, private association, or non-profit association approved by the Executive Director an open space and conservation easement, as proposed by the applicant, for the purpose of creating and maintaining a minimum thirty-six (36) acre salt marsh wetland (Phase 1 of the overall salt marsh wetland creation) surrounded by a buffer area consistent with the transition zone/densely vegetated berms (minimum five feet high above the adjacent golf course grade)/upland areas described in the conceptual wetlands restoration plan (the 36 acre figure shall only include shallow subtidal, occasionally exposed-subtidal, lower intertidal, upper intertidal, and super tidal habitats and shall not include transition/buffer/upland areas described in the conceptual wetlands restoration plan). Such easement shall be over the area of the site located adjacent to the Haynes Cooling Channel and connected to the San Gabriel River by a culvert, including areas in the general vicinity of the green for the 12th hole and the tee for the 13th hole and in the general vicinity of the green for 5th hole and the tee for the 6th hole, as generally depicted on Page 1 of Exhibit B (as revised in the first April 7, 1998 addendum) of the March 19, 1998 staff report for this permit. The easement shall:

- (1) Permit the applicant, its agents, and/or the accepting agency or non-profit organization to enter the property, create and maintain habitat, revegetate portions of the area, and fence the newly created/revegetated area in order to protect such habitats.
- (2) Restrict all development, vegetation clearance, fuel modification and grading within the easement except that necessary to establish/maintain the habitat.
- (3) Permit staff of the Coastal Commission and other resources agencies (e.g., California Department of Fish and Game, U.S. Fish and Wildlife Service, etc.) to enter and inspect for purposes of determining compliance with coastal development permit 5-97-367 and other agency approvals.
- (4) No development, as defined in Section 30106 of the Coastal Act shall occur in wetland creation areas and wetland buffer areas except for the creation and maintenance of habitat and fencing of the created habitat in order to protect such habitats.

The easement area shall be described in metes and bounds. The recorded document shall include legal descriptions of both the applicant's entire parcel and the easement area. The recorded document shall also reflect that development in the easement area is restricted as set forth in this permit condition. The offer shall be recorded free of prior liens which

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the Executive Director determines may affect the interest being conveyed. The offer shall run with the land in favor of the People of the State of California, binding all successors and assigns, and shall be irrevocable for a period of 21 years, such period running from the date of recording.

B. Reservation of Mineral Production Area for Phase 2 and Phase 3 Wetland Creation. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which shall provide that the allowable uses and allowable development on both the entire 7.5 acre area of mineral-production facilities immediately to the southeast of the Haynes Cooling Channel (Lot 7 of Vesting Tentative Tract Map 15381) and the 8.7 westernmost acres of mineral-production facilities immediately to the southeast of the Haynes Cooling Channel (Lot 6 of Vesting Tentative Tract Map 15381) shall, either at the time the on-site mineral-production ceases or on April 15, 2018 (whichever occurs earlier), be restricted to: 1) the removal of the existing mineral-production facilities, 2) removal of contaminants and remediation of the site, and 3) wetland habitat creation/restoration and conservation/open space. The deed restriction shall be recorded over the revised lot of Vesting Tentative Tract Map 15381 which contains the wetlands, golf course, and mineral-production facilities, and shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Coastal Commission-approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

C. Freshwater Marsh Deed Restriction. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which shall provide that: no development, as defined in Section 30106 of the Coastal Act, shall occur in the freshwater marsh wetlands consisting of five interconnecting ponds within the golf course as shown on Exhibit D of the March 19, 1998 staff report, except development necessary for purposes of enhancement and restoration of the wetlands. The deed restriction shall be recorded over the revised lot, which contains the freshwater wetlands, golf course, and mineral-production facilities, of Vesting Tentative Tract Map 15381 and shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Coastal Commission-approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

FINAL WETLAND RESTORATION PROGRAM. (Former Special Condition No. 2)

PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and approval of the Executive Director, a final wetland restoration program for the proposed project. The program shall be developed in consultation with the Commission, California Department of Fish and Game, and U.S. Fish and Wildlife Service and at a minimum shall include:

A. A detailed final site plan of the existing degraded and severely degraded wetlands and a detailed final site plan of the wetland creation restored sites that substantially conform with the plans contained in the Addendum to Concept Wetlands Restoration Plan for the Hellman Ranch ("Addendum") dated February, 1998 prepared by Moffatt & Nichol Engineers in association with Coastal Resources Management (M&N File: 3693) and the Concept Wetlands Restoration Plan for the Hellman Ranch ("Concept Plan") revised November, 1997 prepared by Moffatt & Nichol Engineers in association with Coastal Resources Management, as revised as follows:

(1) The proposed initial "Phase 1" Salt Marsh Wetland shall be a minimum thirty-six (36) acre salt marsh wetland (Phase 1 of the overall salt marsh wetland creation) surrounded by a buffer area consistent with the transition zone/densely vegetated berms (minimum five feet high above the adjacent golf course grade)/upland areas described in the conceptual wetlands restoration plan (the 36 acre figure shall only include shallow subtidal, occasionally exposed-subtidal, lower intertidal, upper intertidal, and super tidal habitats and shall not include transition/buffer/upland areas described in the conceptual wetlands restoration plan).

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(2) Revise Figures A1, A4, and A7 of the Addendum to reflect that the Phase 1 Salt Marsh Wetland has been expanded, to a minimum 36 acres, in the general vicinity of the green for the 12th hole and the tee for the 13th hole and in the general vicinity of the green for 5th hole and the tee for the 6th hole, as generally depicted on Page 1 of Exhibit B (as revised in the first April 7, 1998 addendum) to the staff report for coastal development permit application 5-97-367.

(3) Describe the final acreage (minimum 6.8 acres) and locations of the freshwater marsh wetland areas.

(4) The final acreages of the freshwater marshes and all phases of the salt marsh shall not include the acreage of Transition/Buffer areas (i.e., the saltwater marsh areas which are never subject to the influence of tides, and the freshwater marsh areas not covered by water).

B. The baseline ecological assessment of the existing degraded and severely degraded wetland area submitted with the coastal development permit application.

C. A final overlay map (if a large scale map is produced, a reduced 8 1/2"x11" or 11"x17" copy shall be included in the program) which superimposes the following:

(1) The twenty-five (25) acres of degraded wetland as mapped by the California Department of Fish and Game in its January 13, 1982 Determination of the Status of Wetlands Within the City of Seal Beach, Immediately South and East of the San Gabriel River Channel (Ponderosa Seal Beach Wetlands);

(2) The current 1996 wetlands delineation (27 acres) of the project site prepared by Coastal Resources Management & Chambers Group as shown on Figure 4-7, Page No. 4-13 of the application for coastal development permit 5-97-367;

(3) The areas of wetland fill resulting from the golf course and resulting from creation of the required minimum 36 acres of salt marsh (excluding buffers) and minimum 6.8 acres of freshwater marsh; and

(4) The required minimum 6.8 acres of freshwater marsh and required minimum 36 acres (excluding buffers) of Phase 1 (initial creation) salt marsh areas.

D. Monitoring and Remediation

The monitoring and remediation component of the final wetland restoration program shall include the following:

(1) Statement of Goals and Objectives

The statement of goals and objectives shall specify that the goals of the restoration and habitat construction plans shall be to provide subtidal basin and channel, mudflat, low salt marsh, high salt marsh, upland transition/buffer, and freshwater marsh habitats similar in composition, diversity, and abundance to equivalent well-functioning natural habitats, and that it is intended that the restored and created tidal wetlands will be self-sustaining.

(2) Construction and Restoration

Construction of the freshwater and Phase 1 initial wetland habitats shall be completed within eighteen (18) months of the date of approval of the coastal development permit. A post-construction survey, to be submitted within ninety (90) days of completion of construction to the Executive Director for review and approval, shall be carried out by the permittee to demonstrate that the wetland and transitional habitats were built to the approved specifications. If the Executive Director determines that the restoration and construction was not accomplished to specifications, the permittee shall modify the restored and created wetlands, in consultation with the California Department of Fish and Game and subject

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to the review and approval of the Executive Director, to meet the approved specifications within six (6) months of the post-construction survey. The Executive Director may grant a one-time extension of time to these deadlines for good cause.

The initial planting shall be completed within six (6) months after construction is completed. The applicant may continue planting and other restoration activities within the tidal wetlands for three (3) years following construction with the approval of the Executive Director.

(3) Purpose and Timing of Monitoring and Remediation

After the initial restoration and construction of the freshwater and initial Phase 1 wetlands and associated upland transitional habitats is completed, the wetlands and transitional habitats will be monitored, managed, and, if necessary, remediated. Monitoring shall be implemented to determine whether the performance standards of this condition are met and, if any performance standards are not met, to determine the reasons for the inadequate performance and identify, in consultation with state and federal resources agencies (e.g., the U.S. Fish and Wildlife Service and the California Department of Fish and Game), appropriate remedial measures.

The wetlands and transitional habitats shall be monitored for a period of ten (10) years following completion of construction to measure the success of the restored and created wetlands in achieving the performance standards specified in subsection (6) below. Upon completion of ten (10) years of independent monitoring that demonstrates that the restored and constructed habitats are in compliance with the performance standards, independent annual site inspections shall be conducted for an additional five (5) years to identify any noncompliance with the performance standards.

If the performance standards are not being met, then the permittee shall conduct an independent study to collect, in consultation with the state and federal resources agencies, the information necessary to determine what remediation is needed. The Executive Director, in consultation with state and federal resources agencies, shall determine the required remedial action based on information from the independent study. The permittee shall be required to implement any remedial measures determined necessary by the Executive Director in consultation with state and federal resources agencies. The remedial actions shall be monitored as described herein.

The monitoring plan shall describe the sampling methodology and analytical techniques, which shall be developed in consultation with state and federal resources agencies, for measuring performance relative to the performance standards set forth in subsection (6) below.

(4) Independent Monitoring Biologist

An independent biologist to monitor the establishment and success of the salt marsh shall be selected by the applicant and approved by the Executive Director, and funding for the monitor biologist shall be provided by the applicant for a period of ten (10) years.

(5) Reference Sites

At least three reference sites shall be selected, in consultation with the California Department of Fish and Game and subject to the review and approval of the Executive Director. The reference sites shall be relatively undisturbed natural tidal wetlands located in at least two separate geographic areas within the Southern California bight. The salt marsh reference sites shall have resident populations of Belding's Savannah sparrows. Reference sites must be accessible to the independent monitor and shall contain habitat of interest and shall be characterized by a muted tidal regime similar to the proposed salt marsh.

(6) Success Criteria/Performance Standards

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Performance standards shall be either fixed values or defined variables. The monitoring of the salt marsh and freshwater marsh shall be in compliance with the standards and criteria contained in the Concept Plan, except that: 1) exotic, invasive, and non-native species shall be excluded from any assessment of performance standards, 2) the Executive Director may also use any other information available to determine whether the performance standards are being met, and 3) the proposed performance standards shall be modified as follows for the various proposed habitat zones (the performance standards and success criteria shall be met within the first five (5) years after completion of construction of the Phase 1 salt marsh):

a. Transition Zones

The permittee shall provide a management plan for the proposed berm ringing the salt marsh which serves as transition/buffer area. The plan shall also provide for salvage and ongoing maintenance and management of coulter's goldfield and southern tarplant. The management plan shall be applied to all native species, not just sensitive species.

b. High Salt Marsh

Vegetation in the High Salt Marsh shall contain at least seventy-five percent (75%) as many of the same native species (both in quantity and type) as the least speciose reference site. The average vegetative cover (all native species combined) shall be at least as great as the average vegetative cover at the reference site with the lowest vegetative cover. The average plant height for each species shall be at least seventy-five percent (75%) of the average height of the same species at the reference site with the lowest average plant height, except that pickleweed (*salicornia virginica*) shall be no less than twenty centimeters (20 cm) in average height.

c. Low Salt Marsh

The average vegetative cover shall be at least as great as the average vegetative cover at the reference site with the lowest vegetative cover. The average plant height for each species shall be at least seventy-five percent (75%) of the average height of the same species at the reference site with the lowest average plant height, except that pickleweed (*salicornia virginica*) shall be no less than twenty centimeters (20 cm) in average height (refer also to performance standards for birds in subsection f).

d. Mud Flat

The species composition and abundance of the epifauna (i.e., invertebrates which live on top of the sediment) and infauna (i.e., invertebrates which live in the sediment), shall be estimated at both the project and reference sites. The standards for birds are discussed in subsection f below.

e. Subtidal Basin and Channels

The species composition and abundance of the epifauna and infauna shall be estimated at both the project and reference sites. The total number of fish species shall be seventy-five percent (75%) as great as the reference site with the lowest number of species. The average total number of individual fish shall be seventy-five percent (75%) as great as the reference site with the lowest average total number of individuals. The performance standards for birds are discussed in subsection f below.

f. Birds in all habitats

Performance standards will only apply to wading birds and shorebirds in tidal wetlands. For wading birds and shorebirds, the average number of species present, the average total number of individuals present, and the foraging use of the tidal wetlands shall be similar during the winter and during the summer at the project site and at the reference sites. During the winter and during the summer, a general bird survey of each habitat will be conducted to document the

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species present and their approximate abundance. In addition, an annual survey to document the presence, abundance, and habitat use of Belding's Savannah sparrows will be conducted in the spring of each year.

E. The final design and construction methods that will be used to ensure the mitigation site achieves the defined goals, objectives, and performance standards, and final construction plans.

F. Preliminary remedial measures and provisions which require the final remedial measures to be determined in consultation with the Coastal Commission ("CCC"), California Department of Fish and Game ("CDFG"), and the U.S. Fish and Wildlife Service ("USFWS"). The determination that the wetlands have established and are functioning at a level where they no longer require remediation shall be made by the CCC, CDFG, and USFWS.

G. Provisions for submittal, within thirty (30) days of completion of initial restoration work, of "as built" plans demonstrating that the freshwater and Phase 1 saltwater marsh wetlands have been constructed in accordance with the approved design and construction methods.

H. A written final detailed plan for financing the actual cost of constructing, establishing, and maintaining in perpetuity all approved wetlands. The plan shall provide that the landowner, property manager, and golf course owner/operator are ultimately responsible in perpetuity for freshwater wetland maintenance, as proposed in Sections 5.5.1 and 6.5.1 of the "Concept Wetlands Restoration Plan for the Hellman Ranch" revised November, 1997 prepared by Moffatt & Nichol Engineers in association with Coastal Resources Management. In addition to the restoration obligations as delineated in Special Condition 2.D. above regarding monitoring and remediation, the applicant shall be responsible for maintenance of the Phase 1 (initial construction) of the required minimum 36 acre (excluding buffers) salt marsh for a period of ten (10) years commencing with the start of construction of the wetlands or until the conservation easement over the salt marsh is accepted, whichever occurs later. If the conservation easement is accepted, the accepting agency shall be responsible for maintenance of the salt marsh. The plan shall indicate, at a minimum; 1) the sources of funding, 2) projected costs of constructing, establishing, and maintaining in perpetuity all approved wetlands, and 3) require that costs of on-going maintenance of the wetlands, including monitoring by the independent biologist, shall be paid out of the golf course revenue before any other costs incurred by the golf course, landowner, and its owner/operator.

I. Periodic cleaning and maintenance of the culvert connecting the salt marsh to the San Gabriel River.

J. Periodic removal of invasive, non-native plants from both the saltwater and freshwater marsh wetland areas in perpetuity to ensure maintenance of wetland habitat values.

K. Invasive, exotic, non-native plants shall not be used anywhere in the golf course except as approved by state and federal resources agencies.

L. All construction activities for the golf course and the wetlands, shall not occur during the nesting seasons of sensitive species unless the California Department of Fish and Game provides a written determination to the Executive Director that construction during a particular nesting season will not result in harm to the nesting species, and the determination is accepted by the Executive Director.

M. Prior to commencement of construction of the golf course, the proposed wetland areas (salt marsh, buffers, and freshwater marsh), shall be staked and signed in a manner which clearly demonstrates to construction crews that the wetland areas are not to be entered for any reason.

The permittee shall undertake development in accordance with the final wetland restoration program approved by the Executive Director. Any proposed changes to the approved final program shall be reported to the Executive Director. No changes to the approved final program shall occur without a Coastal Commission-approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

5-97-367 (Hellman Properties, LLC)**REVISED VESTING TENTATIVE TRACT MAP NO. 15381. (Former Special Condition No. 3)**

PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and approval of the Executive Director, two copies of a revised vesting tentative map for Tract No. 15381. The revised map shall not allow the subdivision of proposed Lots 4, 6, and 7 and show that proposed Lots 4, 6 and 7 (i.e., the proposed lots for the golf course and two mineral-production areas) are a single legal lot. The applicant shall record the revised map approved by the Executive Director.

GOLF COURSE OPERATIONS AND GOLFER WETLAND EDUCATION PROGRAM. (Former Special Condition No. 4)

A. Timing of Golf Course Construction. Prior to commencement of construction of the golf course, the proposed archaeological test program (including all required excavation and development of reasonable mitigation measures) shall have been completed.

B. Timing of Golf Course Opening. The golf course shall not be opened for use until both the freshwater and Phase 1 saltwater marsh wetlands have been constructed in accordance with the final wetlands restoration program approved by the Executive Director, as required in Special Condition No. 2 regarding the Final Wetland Restoration Program.

C. Golf ball retrieval. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit, for the review and approval of the Executive Director, a written plan which describes in detail the proposed method for retrieving golf balls from the wetland. The plan shall include the following: 1) a controlled program for golf ball retrieval which minimizes impacts to the wetlands, and 2) golf balls shall not be retrieved from the wetlands by golfers themselves under any circumstances. The golf course operator shall comply with the plan approved by the Executive Director.

D. Golfer education on wetlands. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit, for the review and approval of the Executive Director, a detailed written plan which describes the methods by which users of the golf course will be informed of the wetlands areas (e.g., signage, brochures, instructions printed on score cards, etc., which instruct golfers not to enter wetland or wetland buffer areas).

E. Golf Course Deed Restriction. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which shall provide that:

(1) The applicant, golf course owner/operator and/or wetlands manager/owner shall implement and comply with the final wetland restoration program approved by the Executive Director.

(2) Development and management of the golf course shall be in compliance with the document An Environmental Approach to Golf Course Development & Management prepared for Hellman Properties LLC by Siena College-Audubon International Institute dated December 1996 as proposed by the applicant.

(3) Invasive, exotic, non-native plants shall not be used anywhere in the golf course except as approved by state and federal resources agencies.

(4) The applicant and golf course owner/operator shall implement and comply with the final golf ball retrieval plan approved by the Executive Director.

(5) The golf course shall not be lighted nor shall it be open for night play.

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(6) The golfer education program approved by the Executive Director shall be complied with and implemented.

(7) Both saltwater and freshwater marsh wetlands areas shall be designated as lateral hazards, so indicated by red stakes or lines in accordance with the provisions of "the U.S.G.A. 1998 Official Rules Of Golf", in which golfers shall not enter and over which golfers shall not hit a penalty shot resulting from hitting a ball into the wetlands.

(8) The golf course shall be open to the general public during all hours of operation.

(9) The golf course shall not be converted to a private membership course.

(10) Signs shall be installed which are clearly visible to the general public which inform the general public that the golf course is open for play to the public.

(11) Public parking for the golf course shall be provided at all times based on the standards contained in the Hellman Ranch Specific plan adopted by City of Seal Beach City Council Ordinance No. 1420 on October 27, 1997 (Hellman Ranch Specific Plan Amendment 97-1).

The deed restriction shall be recorded over the revised lot, containing the golf course, wetlands, and mineral-production facilities, of Vesting Tentative Tract Map 15381 and shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Coastal Commission-approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

F. Final Golf Course Plan Designs PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and approval of the Executive Director, final design and construction plans for the proposed golf course. The final plans shall be in substantial compliance with the final wetland restoration plan approved by the Executive Director and the document entitled "An Environmental Approach to Golf Course Development & Management" prepared for Hellman Properties LLC by Siena College-Audubon International Institute dated December 1996.

G. Final Plans for the Golf Clubhouse. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and approval of the Executive Director, final plans for the golf clubhouse. Public access shall be maintained to all common areas of the public golf clubhouse. Public parking for the golf clubhouse shall be provided at all times based on the standards contained in the Hellman Ranch Specific plan adopted by City of Seal Beach City Council Ordinance No. 1420 on October 27, 1997 (Hellman Ranch Specific Plan Amendment 97-1).

PUBLIC ACCESS PROGRAM. (Former Special Condition No. 5)

A. Public Trails Deed Restriction. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which shall provide that:

(1) Uses within the delineated trail over the proposed trail area generally depicted on Exhibit L of the March 19, 1998 staff report for this permit shall be limited to public access, trail maintenance, emergency access to and from the existing mineral production facilities, and construction and maintenance of utilities and oil and gas pipelines. Any construction or maintenance activities for utilities and oil and gas pipelines, and emergency access to and from existing mineral production facilities, within the proposed trails, shall be carried out in a manner which minimizes any impact on the use of the surface area of the proposed trails for public access purposes.

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(2) The design of the proposed and required trails and access to the proposed and required trails shall meet the requirements of the Americans with Disabilities Act.

(3) The proposed and required trails shall be described in metes and bounds and shall be a minimum of twenty-five feet (25') wide with the paved portion being a minimum of ten (10) feet wide.

(4) The trails shall not be lighted in order to minimize impacts to the wetlands.

(5) The trails shall be open to the public from dawn to dusk and shall not be gated. Any changes to the hours of operation of the trails shall require an amendment to this permit unless the Executive Director determines that no amendment is required.

(6) The proposed view overlooks at the ends of the trails shall contain handicap accessible seating.

(7) The trails shall be, as necessary, partially or fully enclosed with see-through structures, such as cages or arched fences, which protect trail users from errant golf balls.

The deed restriction shall be recorded over the public access trail area as generally depicted on Exhibit L of the March 19, 1998 staff report for this permit and shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Coastal Commission-approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

B. Trail Linking Gum Grove Park with the State Lands Parcel and Seal Beach Boulevard. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which shall provide that:

(1)1 A twenty-five (25) foot wide strip of land, at the base of the bluff below Surf Place and Catalina Avenue, which connects the proposed public trail emanating from the State Lands parcel and runs part of the way along the southerly edge of the proposed salt marsh restoration area shall be exclusively reserved for a public trail connecting Gum Grove Park with the State Lands parcel, as generally depicted on Exhibit L of the March 19, 1998 staff report for this permit.

(2) Structures such as partial arched fence enclosures or retaining walls necessary to protect trail users from errant golf balls and potential bluff failure shall be allowed in this area.

(3) 1A trail accessible to the general public shall be built between Gum Grove Park and Seal Beach Boulevard, as generally depicted on Exhibit L of the March 19, 1998 staff report for this permit. Said trail shall be accessible from the proposed residential development as well as from Seal Beach Boulevard.

(4) These required trails shall be constructed in accordance with the requirements set forth in Special Condition 5.A. above regarding the Public Trails Deed Restriction.

The deed restriction shall be recorded over the trail as generally depicted on Exhibit L of the March 19, 1998 staff report for this permit and shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Coastal Commission-approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

PUBLIC ACCESS SIGNAGE. (Former Special Condition No. 8)

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A. **Signage Plans.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit, for the review and approval of the Executive Director, a detailed signage plan which provides for the installation of signs clearly visible from Pacific Coast Highway and Seal Beach Boulevard and at key locations within the development which invite and encourage the public to use the public access and recreation opportunities proposed at the golf course and golf clubhouse, Gum Grove Park, and the State Lands parcel including the proposed public access trails around the salt marsh. Key locations include but are not limited to; 1) the entrance to the State Lands parcel (intersection of First Street and Pacific Coast Highway, 2) the proposed interpretive center, 3) the main entrance to the golf course, 4) the Adolfo Lopez Drive entrance to the proposed golf course, 5) the lobby of the golf clubhouse, and 6) Gum Grove Park. The plans shall also provide for signage which designates ten (10) of the parking spaces at the State Lands parcel for the exclusive use of trail users and which clearly indicates that the bike racks on the State Lands parcel are for the general public. The plans shall indicate the location, materials, dimensions, colors, and text of the signs. The permittee shall install the signs in accordance with the signage plans approved by the Executive Director.

B. **Sign Maintenance.** PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which shall provide that the golf course owner/operator shall; 1) implement and comply with the signage plans approved by the Executive Director, and 2) maintain the signs installed consistent with the signage plans approved by the Executive Director. The deed restriction shall be recorded over the revised lot containing the golf course, wetlands, and oil production facilities and shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Coastal Commission-approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

RESIDENTIAL DEVELOPMENT (Former Special Condition No. 10)

A. **Residential Community Streets.** PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which shall provide that; 1) the streets shown Vesting Tentative Tract Map No. 15402 shall be public and provide public on-street parking, 2) preferential parking shall not be established in the subdivision, 3) public parking shall not be prohibited via "red-curbings" or other means, and 4) the width and numbers of curb cuts shall be minimized. The deed restriction shall be recorded over Street A, Street B, and Street C of Vesting Tentative Tract Map No. 15402 and shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Coastal Commission-approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

B. **Future Coastal Development Permit for Development of the Residential Community.** This coastal development permit does not approve development on the lots created by Vesting Tentative Tract Map No. 15402. A future coastal development permit(s) is required for development, such as site preparation, construction of streets, common walls and landscaping, and construction of the actual homes, etc. on the site.

C. **Timing of Construction.** Residential development, including subdivision improvements and home construction, shall not commence until construction of the Phase 1 initial salt marsh wetlands and the freshwater marsh wetlands has commenced. The homes shall not be occupied until all the following occur: 1) construction of the freshwater wetlands and the Phase 1 initial salt marsh wetlands has been completed, and 2) Gum Grove Park has been dedicated to the City of Seal Beach.

APPENDIX B: Substantive File Documents1. COASTAL DEVELOPMENT PERMITS AND COMMISSION ACTIONS

- A. Coastal Conservancy Project #1-82; Approved 4/22/82
- B. 5-82-221 (Ponderosa Homes); withdrawn 11/17/82
- C. 5-89-514 (MOLA Development Corporation); denied 11/14/89
- D. 5-89-1087 (MOLA Development Corporation); approved 1/12/90
- E. 6-90-219 [Batiquitos Lagoon restoration and enhancement]

2. WETLAND DOCUMENTS

- A. An Assessment of Wetland Resources Within the City of Seal Beach South of the San Gabriel River, prepared by Bob Radovich of the California Department of Fish and Game, June 1980.
- B. Determination of the Status of Wetlands Within the City of Seal Beach, Immediately South and East of the San Gabriel River Channel (Ponderosa Seal Beach Wetlands), prepared by the California Department of Fish and Game, January 13, 1982.
- C. Conceptual Wetlands Restoration Plan for the Hellman Ranch dated November 1997 prepared by Moffatt & Nichol Engineers in association with Coastal Resources Management.
- D. Addendum to Concept Wetlands Restoration Plan for the Hellman Ranch dated February, 1998 prepared for Hellman Properties LLC by Moffatt & Nichol Engineers (M&N) File: 3693) in association with Coastal Resources Management
- E. Hellman Ranch Wetland Restoration Feasibility Study dated July 20, 1998 prepared for The Port of Long Beach by Moffatt & Nichol Engineers (M&N File: 3693)

3. OTHER DOCUMENTS

- A. Final Environmental Impact Report for the Hellman Ranch Specific Plan dated August 1997 prepared by P&D Consultants for the City of Seal Beach (State Clearinghouse No. 96121009) and certified by City of Seal Beach City Council Resolution 4562 on September 19, 1997.
- B. "Development Agreement by and Between the City of Seal Beach and Hellman Properties, LLC Relative to the Development known as the Hellman Ranch" dated October 27, 1997
- C. An Environmental Approach to Golf Course Development & Management prepared for Hellman Properties LLC by Siena College-Audubon International Institute dated December 1996

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D. A Research Design for the Evaluation of Archaeological Sites within the Hellman Ranch Specific Plan Area dated November 1997 prepared by KEA Environmental, Inc. for the City of Seal Beach

APPENDIX C: Local Approvals

- 1) City of Seal Beach City Council Resolution 4570 approving Tentative Tract Map No. 15381 (subdivision of site into 9 lots)
- 2) City of Seal Beach City Council Resolution 4571 approving Tentative Tract Map No. 15402 (Residential subdivision);
- 3) City of Seal Beach Ordinance 1420 adopting the Hellman Ranch Specific Plan
- 4) City of Seal Beach Resolution 4562 approving the Final Environmental Impact Report for the Hellman Ranch Specific Plan; October 27, 1997
- 5) Development Agreement

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LIST OF EXHIBITS**Exhibit 1**

Location Maps	Page 1
Map of property ownership	Page 3
Proposed Subdivision (Tentative Tract Map 15381)	Page 4
Maps and Tables describing proposed project	Page 5
August 6, 1998 letter from applicant to staff	Page 10
Applicant's attorney's summary of legal issues	Page 13
August 19, 1998 letter to the Commission from the City Attorney	Page 22
Water Quality information provided by applicant	Page 24
May 11, 1998 letter from applicant to staff	Page 32
Documentation regarding property ownership	Page 35

Exhibit 2

- June 4, 1998 letter from the applicant to the Coastal Commission with attachments.
Attachment A: Applicant's summary of the legal framework for approval in their opinion: Page 8
Attachment B: Applicant's suggested findings for approval: Page 14
Attachment C: Matrix form of applicant's requested changes to the special conditions of approval as recommend in the March 19, 1998 staff report: Page 45
Attachment D: Applicant's April 7, 1998 public hearing transcript: Page 49
Attachment E: Biological success of the Hellman Wetland Restoration Program: Page 66
Attachment F: Hydraulic and Hydrology Factors in support of the Hellman Wetland Restoration Program: Page 71
Attachment G: Economic feasibility of the golf course: Page 74
Attachment H: Issues regarding residential development: Page 77
Attachment I: Letter from the City Attorney to the Coastal Commission dated June 3, 1998: Page 80
- Applicant's requested revisions (in strikethrough and underline version) to the special conditions of approval as recommended in the March 19, 1998 staff report: Page 85

Exhibit 3: Port of Long Beach

Hellman Ranch Wetland Restoration Feasibility Study dated July 20, 1998 prepared for The Port of Long Beach by Moffatt & Nichol Engineers (M&N File: 3693)

Exhibit 4: Wetlands/Resources Agencies

Applicant's 1996 wetland's delineation of the subject site	Page 1
1982 Department of Fish and Game degraded wetlands determination	Page 2
1980 Department of Fish and Game wetlands assessment	Page 11
Army Corps' June 5, 1998 e-mail to staff	Page 20
Army Corps' March 23, 1998 to applicant	Page 21
USFWS's June 5, 1998 letter to staff	Page 24
Applicant's chronology of contact with USFWS staff	Page 26
USFWS's March 26, 1998 letter to applicant	Page 28
Applicant's March 17, 1998 letter to USFWS	Page 30
USFWS's March 13, 1998 letter to staff	Page 38
Department of Fish and Game's March 16, 1998 memo to staff	Page 42
Department of Fish and Game's May 21, 1997 letter to the City of Seal Beach	Page 44
Applicant's information regarding the Southern California Wetlands Clearinghouse	Page 47

Exhibit 5: Applicant's November 1997 concept wetlands plans

5-97-367 (Hellman Properties, LLC)**Exhibit 6:**

Coastal salt marsh wetland functional assessment
February 1998 addendum to the concept wetlands plan

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Exhibit 7: 4/26/1990 Revised Findings for Permit 5-89-1087**Exhibit 8: 1982 Coastal Conservancy Project 1-82****Exhibit 9: Pesticide Information**

Applicant's May 11, 1998 letter to the Coastal Commission (Page F1)
May 11, 1998 memo from Audubon International to the applicant, (Page F3) with the UC-IPM Pest Management Guidelines attached (Page F5)
"An Environmental Approach to Golf Course Development and Management," December 1996 prepared by Audubon International (Page F81)

Exhibit 10: Information from Applicant on other Golf Courses and Water Quality Constraints**Exhibit 11: Documentation regarding the project Final Environmental Impact Report**

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